Supreme Court, U.S.
FILED

(1) 93 1472 MAR 14 1994

OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

WILBURT A. SIEGEL,
Petitioner,
VS.
JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR.; constituting the membership of the Commissioners of the James Island Public Service District; ROBERT E. WELCH, Manager, James Island Public Service District; EDWIN B. QUINN, Wastewater Superintendent, James Island Public Service District; SINKLER & BOYD, PA; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, Judge; J. ALTON CANNON, JR., Sheriff, Charleston County; ROBERT MILLER, Undersheriff, Charleston County; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner, South Carolina Department of Corrections; P. DOUGLAS TAYLOR, Warden of Lieber Correctional Institution,
Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Wilburt A. Siegel, Pro Se
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586

125

QUESTIONS PRESENTED

1. Is this "SEWERGATE" a novel issue where Siegel was seeking a safe sewerline and was prosecuted in both criminal and civil courts for the same offense?

2. Should there be certainty and stability in the law concerning an American citizen's/Siegel's liberty/ property rights in South Carolina?

3. Was public policy and/or police power within all of the Defendants' Jurisdiction/Statutory Authority in participating in Siegel's wrongful incarceration?

4. Did the United States Court of Appeals for the Fourth Circuit err in accepting the District Court's reasoning in dismissing all defendants prior to discovery and trial by jury, because Siegel is not in prison now?

TABLE OF CONTENTS

Questions presented i

Table of Contents ii

Table of Appendix iii

Index of Authorities ..... iv, v

Index of Cases cited vi

Parties/Petition 1

Opinions & Orders Below 2

Jurisdiction 3

Constitutional Prov. Involved .. 5

Statutory Prov. Involved 7

Statement of the Case 8

Facts 16

Reasons to grant petition 25

Conclusion 41

Relief Sought 42

TABLE OF APPENDIX:

ORDERS:

"A" United States Court of Appeals for the Fourth Circuit..... 1-A

District of Charleston, SC:

"B" Judge Blatt 6-A

"C" Magistrate Carr 10-A

CONSTITUTIONAL PROV.

"D" Defendants 49-A

"E" Siegel 52-A

"F" ACT 498, 1961 (created James Island PSD) 56-A

"G" South Carolina Code of Laws §6-11-1210, etc. 59-A

"H" James Island PSD Waste-water Use & Rate Resol..... 63-A

"I" James Island PSD Rules of Procedure 66-A

South Carolina Code of Laws: -

"J" §15-78-10 - Tort Law 67-A

"K" §24-3-10 - Prison System.... 71-A

"L" Hearing before Judge Blatt... 74-A

AUTHORITIES CITED

Page

UNITED STATES CONSTITUTION:

Article I, Sec. 9 ..... 6, 33

Article III, Sec. 2 ..... 3, 5

Amendments:

IV 6, 30

V 6, 30, 31

VI 6, 31

VII 6, 31

VIII..... 6, 32

IX 6, 32

XI 5, 30

XIV 6, 33, 40

United States Federal Rules:

Rule 12 (b) (6) 40

Rule 14(i) 4

§28-USC-1257(3) 3

§28-USC-1343 4

§42 USC 1983 .....37, 38, 40

§42-USC-1985 4

AUTHORITIES CITED (cont'd)

Page

South Carolina Code of Laws: -

§6-11-1210, etc. 7, 36

§15-78-10, etc. 7, 36

§24-3-10, etc. 7, 37

SCRCP #60(b) (4), (5) ...19

Act 498 ..... 7, 35

Act 498, Sec. 9 35

CASES CITED

Page

CUMMINGS VS STATE OF MISSOURI... 33
71-0356) (1867)

DeSOUTO VS COOKE, et al 40
(751 F. Supp. 794
(E.D.Wis. 1990)

HAFER VS MELO, et al 37
(112 S. Ct. 358,
60 US LW 4001) (1991)

LUCAS VS. SOUTH CAROLINA 25, 41
COASTAL COUNCIL
(112 S. Ct. (1992)

YICK WO. VS. HOPKINS, ... 38
SHERIFF, etc.
(118th U.S. 356, (1886)
(Sup. Court Rep. 1064-1073)

MISC.

Rebirth of our Nation 34

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

WILBURT A. SIEGEL,
Petitioner,
VS.
JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR.; constituting the membership of the Commissioners of the James Island Public Service District; ROBERT E. WELCH, Manager, James Island Public Service District; EDWIN B. QUINN, Wastewater Superintendent, James Island Public Service District; SINKLER & BOYD, PA; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, Judge; J. ALTON CANNON, JR., Sheriff, Charleston County; ROBERT MILLER, Undersheriff, Charleston County; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner, South Carolina Department of Corrections; P. DOUGLAS TAYLOR, Warden of Lieber Correctional Institution,
Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Comes now the petitioner, Wilburt A. Siegel, respectfully prays that a writ of certiorari issue to

review the Order of the United States Court of Appeals for the Fourth Circuit decided November 10, 1993, rehearing denied December 16, 1993, Mandate issued December 23, 1993.

OPINIONS AND ORDERS BELOW

The unpublished Order issued by the USCA Fourth Circuit on November 10, 1993, rehearing denied December 16, 1993, accepted the reasoning of the Charleston South Carolina District Court that my Complaint against all defendants for wrongful incarceration be dismissed prior to discovery because I am not in prison now, my case is without merit. A copy of the above Orders is submitted as Appendix "A" to this petition.

The Order of the South Carolina District Judge at Charleston

accepting the recommendation of the Magistrate Judge in dismissing all of the defendants prior to discovery and trial by jury is submitted as Appendix "B" to this petition.

The Charleston South Carolina Magistrate Judge's Report and Recommendation dismissing all defendants is submitted as Appendix "C" to this petition.

JURISDICTION

This petition is filed within ninety (90) days of the USCA Fourth Circuit's denial of rehearing. This Honorable Court's jurisdiction is invoked under the United States Constitution Article III, Section 2. paragraph 2. "...the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact...", and under 28 U.S.C. §1257(3).

RULE 14(i): The basis for federal jurisdiction in the court of first instance is FRCP §28-1343: Civil rights and elective franchise:

(a) The district courts shall have orginal jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

CONSTITUTIONAL PROVISIONS INVOLVED

The entire history of this "SEWERGATE" was reviewed in the Magistrate Judge's Report and Recommendation (App. "C") showing I have been prosecuted in criminal and civil courts for the same self-defense action...for the crime of being unable to connect to a raw sewerline installed in the highway drainage ditch, a breath away from the waterline that serves the entire community...this case involves a new issue - my wrongful incarceration.

The Magistrate Judge's Order cited the United States Constitution Art. III, Sec. 2 and Amendment XI as his reason for dismissal regarding State Circuit Judge Howell, the South Carolina Department of Corrections and officials. (App."D").

SIEGEL'S CONSTITUTIONAL PROVISIONS INVOLVED

I, South Carolina Inmate No. 153926 claim that the following Article and Amendments IV, V, VI, VII, VIII, IX and XIV (Appendix "E") to the beautiful United States Constitution sounds out clear and strong the guaranteed civil, legal and vested rights of liberty and property in America...that surely includes the State of South Carolina, the County of Charleston, the James Island Public Service District...yet, I have been denied in this long, wasteful, unnecessary SEWERGATE:

ARTICLE I Section 9

> "...No Bill of Attainder or ex post facto Law shall be passed."

STATUTORY PROVISIONS INVOLVED

As the Defendant James Island Public Service District through its elected commissioners, its employees, its attorneys claim as their authority for criminal and civil court action against their citizens to be:- Excerpt at Appendix: -

"F" ACT 498, 1961 (created James Island PSD, w/limited powers)

"G" South Carolina Code of Laws §6-11-1210, etc. (Sewage, etc.)

"H" James Island PSD Wastewater Use and Rate Resolution

"I" James Is.PSD Rules of Procedure

South Carolina Code of Laws: -

"J" §15-78-10 - Tort Law

"K" §24-3-10 - Prison System

"L" Hearing before Judge Sol Blatt regarding constitutionality of the penalty section of Act 498 and 6-11-1210, etc.

STATEMENT OF THE CASE

This case was filed in the Charleston South Carolina District Court after I was wrongfully incarcerated in a maximum security cell at a South Carolina State Penitentiary...Inmate Number 153926.

My crime was being unable to do the impossible - connect to an expen-ive-crushed-full-of-roots sewerline installed in the highway drainage ditch that I had pleaded to be corrected by the District for years.

State Judge ordered me to serve six (6) months definite time in the Charleston County Jail-Public Works.

Judge changed his mind.

.....Ordered me to serve six (6) months definite time in Lieber Correctional Institution; the Charleston County Sheriff to pick me up and transport me to Ridgeville,

South Carolina.

Next day the South Carolina Department of Corrections rejected me.

Strangely, the State Prison Guards "deposited" me back to the Charleston County Sheriff, at the downtown Charleston Courthouse.

Same angry State Judge wanted me returned to State Prison immediately.

.....Finally said Appeal.

.....Stayed his second Order of incarceration.

Judge changed his mind.

.....Abated his second incarceration order that was under appeal.

.....Resentenced $100/day fine to become a lien on property to inure to the benefit of the enterprise sewerline business owner, the James Island Public Service District.

My State Prison fingerprints, mug shot/records were destroyed be-

cause I was not supposed to be there.

In this present case the defendants brought forth the prior litigation over the past decade whereby the James Island Public Service District initiated arrest warrants that were declared unconstitutional by the General Sessions Judge; followed by the District filing a civil suit on the same sewerline. The United States District Magistrate Judge recited the events that led up to my wrongful incarceration in his Report and Recommendation.

Discovery was never scheduled for this case before the District Court in Charleston, yet, a decision to dismiss all Defendants was recommendated by the Magistrate Judge.

The Charleston District Judge accepted the Magistrate's Report and

Recommendation.

The United States Court of Appeals for the Fourth Circuit accepted the reasoning of the District Court that I was not in prison now and my complaint was without merit.

No oral argument was held at the Charleston, South Carolina District Court or the Fourth Circuit.

It is my prayer this Honorable Court will review the entire record and agree the Constitutional rights granted and guaranteed by our United States Constitution have been ignored by the Defendants shown in this petition for certiorari and you will find those in charge of our rights must act within their Jurisdiction and within the State of South Carolina's Statutory Authority, regarding wrongful incarceration.

May 18, 1992 I forwarded my Informal Brief, with Appendix number 1-8 to the United States Court of Appeals for the Fourth Circuit; the Appendix attempted to present this unbelievable SEWERGATE, as Appendix:

#1 PICTURES AND UNFAIR TREATMENT: (abandoned-crushed-full-of-roots sewerline, when unsigned Rule to Show Cause was served...11 years of being prosecuted to become "A SLAVE" to an engineering mistake...a sewerline in highway drainage ditch, not properly bedded, not properly covered, not permitted or inspected by DEHEC...a breath away from the Charleston City waterline)

#2 NEWS ARTICLES: JUSTICE SYSTEM IN SOUTH CAROLINA...(Publicity stunt: SIEGEL GOES TO JAIL IN SEWER LINE FIGHT...JIPSD filed

six cases the afternoon I was taken to prison, 100 CRR letters sent to "slackers" who failed to connect to a proper sewerline; STATE SPRINGS SIEGEL AFTER ONE DAY BEHIND BARS; GUILTY OF LIVING IN THE PSD; JUDGE, STATE AT ODDS IN SIEGEL CASE; etc.)

#3 JANUARY 12, 1989 HEARING BEFORE JUDGE WILLIAM T. HOWELL (he considered me a fugitive...the afternoon I was rejected from Lieber State Prison...wanted me returned to Lieber immediately; stayed Order and said Appeal)

#4 RECAP OF FORMER CASES: (Criminal and civil-same sewer)

#82-GS-10-1313 (arrest warrants declared unconstitutional)

#84-CP-10-3476 (Civil case on same sewerline)

#86-CP-10-0802 (Civil rights

Case: Transferred by the James Island Public Service District to Federal Court: #86-0775-8 - malicious prosecution and abuse of process...28 months later remanded back to State Court; same Judge Howell had already sentenced me to prison, he dismissed my civil rights case, granted JIPSD Summary Judgement)

#5 CALENDAR OF EVENTS (SEWERGATE)

12-06-68 thru 12-20-90

(From threatening letters to Criminal Arrest Warrants...to "cash offer"-keep secret, both Mr. and Mrs. Siegel sign away all past, present and future claims against the District, etc.;...to wrongful imprisonment;.....to $100/day fine-lien on property; all due to an improper sewerline)

#6 ENVIRONMENTAL ISSUES: (South Carolina-map-Cartoon accepting hazardous waste from other states, etc. Siegel is not a health hazard)

#7 March 20, 1991 (Transcript of Hearing before Magistrate Judge, Charleston South Carolina District Court... was familiar with the entire prior SEWERGATE. No discussion re: discovery)

#8 AUTHORITY OF DEFENDANTS (Lack of Public Policy, Jurisdiction and Statutory Authority...I was wrongfully incarcerated in a maximum security cell, in a state prison; because of the actions brought by a commercial enterprise business of collecting sewage, who enjoys complete autonomy...no oversight of the Public Service Commission)

FACTS

In 1968 we moved into our new home with an approved by the Health Department septic system, no trouble.

In 1979 I paid the required tap in fee and permit to become one of the first customers of the District's "wastewater collection system".

I have been seeking a proper, safe sewerline since the beginning of the installation in our neighborhood, but to this date have failed.

The James Island Public Service District installed some raw sewage lines in a swiss-cheese pattern in a portion of the District - with grants and loans from the Farmers Home Administration and the Environmental Protection Agency.

The District enjoys complete autonomy, no oversight from the

Legislative Delegation, Charleston County Council or the Public Service Commission in Columbia, S. C. that regulates rates for utilities.

The District's Use and Rate Resolution is so powerful that I was the first citizen to be served with a criminal arrest warrant "for failure to connect to a proper sewerline" when I was provided an improper sewerline.

The Charleston County General Sessions Court declared the arrest warrants to be unconstitutional and my criminal record expunged.

The James Island Public Service District then filed a Civil case on the very same improper sewerline... their same powerful Wastewater Use and Rate Resolution.

The District withheld the truth from the Court(s).

September 09, 1988: We observed an employee of the District attempting to replace the plug in the sewerline that empties into the manhole from the ditch-the sewerline had been ABANDONED; was crushed-full-of-roots for years; the District knew it as they kept returning to put cement in the ditch to hide the leak.

I had been prosecuted in both criminal and civil court for practicing "BUYER BEWARE". Common sense and knowledgeable people, including the manufacture of the very PVC pipe, said the installation was improper.

September 23, 1988: The South Carolina Department of Health and Environmental Control's Engineer stated DHEC's approval should have been obtained prior to any installation.

September 26, 1988: I waited two weeks. Nothing from the JIPSD

Commissioners or employees. I filed Motion to Vacate Injunction-Declare Order Void, pursuant to SCRCP #60(b) (4) and (5); with colored pictures of the abandoned sewerline.

I requested trial date from the Clerk of Court's office, was told my Motion would be placed on the upcoming Motion Calendar.

October 14, 1988: JIPSD served Rule to Show Cause, with an unsigned Order. Trial scheduled within four days, knowing there was no sewerline.

October 17, 1988: At 8:30 AM Siegel filed Motion to Quash Petition for Rule to Show Cause and Deny Order.

When copy of Siegel's Motion was given to Judge Howell's law clerk, JIPSD's attorney came with his Petition for Rule to Show Cause and Order for Judge Howell's signature;

trial scheduled for the next day fully knowing the sewerline had been abandoned and the Court had been fully informed by Siegel's Motions.

SAME MOMENT...JIPSD's contractor was at Bradford Avenue to remove the crushed-full-of-roots-sewerline they abandoned years ago...replaced with 19 feet of ductile iron but left PVC a breath away from the Charleston City waterline; in violation of all good engineering practice.

October 20, 1988: JIPSD served another Petition for RULE TO SHOW CAUSE, this time with a signed order by Judge Howell; contempt trial to be held October 26, 1988, within 6-days.

October 21, 1988: Siegel filed Supplement to Motion to Quash JIPSD's Petition for Rule to Show Cause; providing for the Court clear, colored pictures of the crushed-full-

of-roots-PVC sewer pipe the District knew was improper from the day it was improperly installed.

October 26, 1988: At the Trial Judge Howell allowed JIPSD's attorney to speak four pages of transcript but interrupted me after 1-minute of testimony, stating his hands were kinda tied and if he did not do something he would be held in CONTEMPT...if I could not afford the sewerline to move out of the house.

He found me in willful contempt.

SENTENCE: Six months in the Charleston County Jail - Public Works, effective December 26, 1988.

December 19, 1988: Charleston County Undersheriff Miller stated the Judge forgot to sign commitment papers, would get with us after the first of the year, when Judge returned to the Bench.

January 06, 1989: Judge Howell changed his first Order of Incarceration, now six months definite time at Lieber Correctional Institution. Undersheriff Miller called Siegel, would bring the Order with him when he picked me up on January 11th at 9:00 AM.

Mrs. Siegel offered to drive me to the Prison, but he said "No, the Judge Ordered we pick him up".

January 11, 1989: Charleston County Sheriff Cannon, Undersheriff Miller and deputies arrived at Bradford Avenue to take custody of WILBURT A. SIEGEL.

Sheriff transported me out of the County to Lieber State Prison where I was processed, mugged, fingerprinted, examined by female person, prison clothes issued, placed in a maximum security cell.

January 12, 1989: About noon I was told to change my clothes, was given my property (medicine bottle for another prisoner); put in a van, unknowing where I was being taken.

On I-26 the prison guards asked me if I knew the way to the Charleston County Jail. I was not accepted there. The drivers were instructed to take me downtown to Sheriff Cannon's office.

After four hours a hearing was held before a very angry Judge Howell with a very sick Inmate #153926 before him.

He believed I was a fugitive (I was surrounded by law enforcement officers). He wanted me returned to Lieber immediately.

Finally asked someone to appeal his Order and Stayed his January 6th order.

February 13, 1989: I was admitted to an acute care medical facility, in an attempt to survive the events that occurred and threatening phone calls.

February 16, 1989: Judge Howell held a status conference, abated the two prior orders that were under appeal, resentenced me (in my absence) to $100/day fine/lien on property to inure to the benefit of the James Island Public Service District.

The last sentence in Judge Howell's Order: "An additional status conference may be scheduled in the future". Judge Howell is not through with me yet.

If only I could shorten or erase all that has happened to me, but I cannot. The ulterior motive of the Defendants is apparent ... publicity; not the health of the District/State.

REASONS FOR GRANTING PETITION

The decision of the Charleston South Carolina Federal Court in dismissing all Defendants prior to discovery was made prior to the very important and relevant decision of this Honorable Court in LUCAS VS SOUTH CAROLINA COASTAL COUNCIL (112 S. Ct. June 29, 1992) at page 2902; Justice Kennedy concurring in the judgment:

> "The case comes to the Court in an unusual posture ... whatever may occur in the future cannot undo what has occurred in the past.
>
> ... It is well established that temporary takings are as protected by the Constitution as are permanent ones".

As discussed in the above case this Court determined that much fear in the police power of regulatory deprivation of property and how the Court's "takings" jurisprudence, on

citizens' historic understandings regarding the content of, and the State's power over, the "bundle of rights" that they acquire when they take title to property. In this present case the Defendants have not proven the common-law maxim sic utere tuo ut alienum non laedas (use your property in such a manner as not to injure that of another).

Surely the "bundle of rights" that was discussed in the above case (page 2899) applies to a citizens's liberty as well as property. My wrongful imprisonment is surely as protected by the Constitution as permanent or long enduring imprisonment.

I was ordered to serve six months definite time in State Prison. The sentencing Judge lacked jurisdiction to select the Prison where my term would be served.

The Charleston County Sheriff and his deputies lacked jurisdiction to enter my home, transport me and deposit me out of the County.

I was wrongfully accepted by the State Prison. It took them some 28 hours to determine that statutory fact. (Appendix "K")

Yet, Judge Howell stated at the February 16, 1989 hearing that:

> "Gentlemen, as I have advised you, the purpose of this hearing today is in the nature of a status conference. As you are both aware, on the day after Lieber Institute sent Mr. Siegel back to Charleston they decided they were in error and they advised this Court that they were ready to receive him back.
>
> ...I notice Mr. Siegel is not here.
>
> ...I am hampered by the fact that I cannot pronounce a sentence on an individual who is not present in court. I will defer formal sentencing until that time."

Judge Howell changed his mind. He abated the wrongful incarceration orders and added the $100/day/fine to become a lien on property.

The Defendants were using me as a "YO-YO".

There is no certainity and stability in the law in the State of South Carolina when it comes to the liberty and property rights of an American citizen.

It should be axiomatic that a South Carolina State Judge must have the power to enforce its own Orders, prior to sentencing me to Lieber.

The James Island Public Service District, its Commissioners, its employees, its attorneys should have provided a proper sewerline prior to obtaining arrest warrants, civil cases, rule to show cause.

Oddly, the District was willing

to vacate their own Order, pay cash, Siegels sign away all past, present and future claims against the District, etc., to be kept secret; all the time knowing the sewerline was wrong.

This is surely a novel issue to bring before this Honorable Court, one without precedent, because the Defendants, individually or in concert did have an ulterior motive to have me incarcerated. They needed a whipping boy and found me.

Many citizens were not connecting to a "proper sewerline"...I was seeking one...unsuccessfully.

If a citizen paid the monthly sewer charge they were not required to connect to the sewerline.

I was not being billed.

Health of the District was never the issue.

U. S. CONSTITUTION-AMENDMENTS

APPENDIX "D"

Amendment XI: Was cited in the Charleston South Carolina District Magistrate's Report and Recommendation (Appendix "C") as the reason for dismissing Judge Howell, the South Carolina Department of Corrections and its officials; I feel is mistaken authority; as the State abolished sovereign immunity. (Appendix "J")

APPENDIX "E"

Amendment IV: "...the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.." has been violated by the Defendants in having me wrongfully incarcerated without jurisdiction.

As Amendment V: declares "No person shall...be deprived of life,

liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Yet, South Carolina State Judge Howell sentenced me in my absence on February 16, 1989...after making the remark that he could not and abated the two prior incarceration orders of six-months definite time; then ordering $100/day/fine/lien on property is a violation of Amendment V.

Amendment VI: provides "...to enjoy the right to a speedy and public trial, by an impartial jury..." surely applies to this instant case of wrongful incarceration, where all defendants were dismissed prior to discovery.

Amendment VII: "In Suits at common law, where the value in controversy shall exceed twenty

dollars, the right of trial by jury shall be preserved,..." has been violated by the Defendant District in their Wastewater Resolution declaring "not less than $100. a day" and by Judge Howell creating a fine in lieu of incarceration in my absence, to be a lien on property, to inure to the benefit of the JIPSD.

Amendment VIII: "Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted" ... has been violated repeatedly throughout the record of this SEWERGATE.

Amendment IX: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people" surely includes the right of privacy and enjoyment of our "golden years", as much as life and nature

will allow.

Amendment XIV: Thankfully such beautiful words brings all the hopes and dreams of every American citizen into focus; without which we would all perish and we would not be striving to sell this wonderful DEMOCRACY throughout the World...I pray for those rights to be granted me so that I may enjoy the freedom our relatives and friends gave their lives to preserve.

At Appendix "H" the James Island Public Service District's Use and Rate Resolution requiring connection to their sewerline is a violation of Article I Section 9: "...No bill of Attainder or ex post facto law shall be passed."

In 1867 the United States Supreme Court discussed in CUMMINGS VS STATE OF MISSOURI (71-0356): -

> "An ex post facto law is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed".

As so well stated in the wonderful book "Rebirth of our Nation", Author - Dr. Donald Howard, (page 150, printed with permission):

> "When Constitutional Law becomes subordinate to administrative law, it is our moral obligation as American citizens to be willing to bear the expense of contesting the validity of that administrative law in the Courts.
>
> If it is not contested, it will become a permanent fixture in government and a tyranny to yet unborn generations".

Surely this Nation does not provide that an American Citizen be wrongfully imprisoned, his estate be seized for the "CRIME" of failure to connect to an "improper" public sewerline; which would cause trouble.

At Appendix "F" Act 498 created the James Island Public Service District...powerful authority to take a citizen to criminal court, seek unlimited fine or imprisonment, as:

> SECTION 9.
> States: Penalties.-
> Any person, firm or corporation, wilfully failing or refusing to comply with any rule or regulation of the Commission promulgated or adopted under authority duly vested in it, after written notice of such rule or regulation and demand for compliance therewith, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding twenty-five dollars or imprisonment of not exceeding ten days; provided, that each day after conviction of such failure or refusal to comply that the same shall continue shall constitute a separate offence, and be subject to like punishment.

That law was declared unconstitutional by the General Sessions Court, as it was not a

General Law but Federal Judge Sol Blatt (Appendix "L") ruled it was constitutional and not superseded by South Carolina Code of Laws §6-11-1210, etc. (Appendix "G").

That leaves a citizen at the mercy of any whim or Resolution a commercial operation such as the wastewater collection system cares to invent. (Appendix "H" and "I")

At Appendix "J" is excerpt from South Carolina Code of Laws §15-78-10, known as the "Tort Claims Act", effective July 1, 1986 whereby the public policy of the State waives soverign immunity.

The facts before this Court shows there is a case or controversy and I do not lack standing to seek help from the Federal Court.

As the Defendants lacked jurisdiction to participate in the

actions that led to my wrongful incarceration by ignoring the South Carolina Code of Laws §24-3-10, etc. (Appendix "K") whereby the designate place of confinement of prisoners in the State of South Carolina is determined by the Prison Officials - not a Judge or Sheriff.

Yet, the Defendants acted under color of state law. As a citizen of the United States I should be able to maintain a §1983 suit against them.

I feel the applicable case law to be HAFER VS MELO, et al (112 S. Ct. 358, 60 US LW 4001): Justice O'Connor delivered the opinion:

> In WILL V. MICHIGAN DEPT. OF STATE POLICE, 491 U.S. 58 (1989), we held that state officials "acting in their official capacities: are outside the class of "persons" subject to liability under 42 U.S.C. §1983. 491 U.S. at 71. Petitioner takes this language to mean that §1983

> does not authorize suits against state officers for damages arising from official acts. We reject this reading of WILL and hold that state officials sued in their capacities are "persons" for purposes of §1983. (11-05-91).

When the Fourteenth Amendment to the United States Constitution was just a teenager the case of YICK WO V. HOPKINS, SHERIFF, etc. (118th U.S. 356, May 10, 1886) (Supreme Court Reporter page 1064-1073) concerned Constitutional Law - Ordinances - Wrongful imprisonment; MATTHEWS, J.: -

> The ordinances vesting in the board of supervisors (County and City of San Francisco)...not a discretion to be exercised upon the consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only to places, but as to persons.
>
> ...The power given to them is not confided in their discretion in the legal

sense of that term, but is granted to their mere will.

It is purely arbitrary, and acknowledges neither guidance nor restraint.

When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.

Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.

And the law is the definition and limit of power. ...in the famous language of the Massachusetts bill of rights, the government of the Commonwealth "may be a government of laws and not of men".

May I ask of this Court to consider the case of DeSOUTO VS COOKE, et al, re: Prison Officials (751 F. Supp. 794 (E.D. Wis. 1990):

> Motion to dismiss under FRCP 12(b)(6):
> Page 797: ..."Founded upon an awareness of applicable law, as undoubtedly many pro se complaints are, and constrained by instructions unique to pro se litigant, even a legitimate claim may be fodder for a motion to dismiss".
>
> Page 799: "At this early stage in the action, the Court is not satisfied that Mr. DeSouto's allegations, liberally construed and taken to be true, fail to state a claim entitling him to relief under the 14th Amendment and #1983".

The facts are clear and can be proven beyond a doubt at trial. I have been deprived of my freedom to enjoy life in America; as much as life and nature will permit.

This case should be allowed to proceed to discovery and jury trial.

CONCLUSION

As the United States Court of Appeals for the Fourth Circuit accepted the Court at Charleston South Carolina's dismissal of all defendants, I feel it was premature as the Defendants would not reply to my interrogatories, discovery should be accomplished.

This Court made the decision in LUCAS V. SOUTH CAROLINA COASTAL COUNCIL (112 S. Ct. 2886 (1992) that proves the State of South Carolina can err in their regulatory powers, as is true in this instant case.

The record shows the Defendants' actions were without jurisdiction, they abandoned common sense, and certainly abandoned Common Law; not in the interest of the health and welfare of citizens.

RELIEF SOUGHT

This case certainly presents obstruction of justice that should not be tolerated in America.

With the facts presented I pray this Honorable Court will grant my petition for writ of certiorari, as the lower Courts decided this case in conflict with Constitutional rights and resolved this novel issue in an erroneous manner.

Submitted in respect for the Laws of this Nation,

Wilburt A. Siegel

Wilburt A. Siegel, Petitioner
1058 Bradford Avenue
Charleston, SC 29412
Phone: 803-795-8586

March 11th, 1994

APPENDIX "A"

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Wilburt A. Siegel, Plaintiff-Appellant

v.

James Island Public Service District,

et al, Defendants-Appellees.

No. 92-1204

Appeal from the United States District

Court for the District of

South Carolina, at Charleston.

Solomon Blatt, Jr.,

Senior District Judge.

(CA-91-6)

Submitted: November 6, 1992

Decided: November 10, 1993

Before WIDENER and HALL,

Circuit Judges, and

SPROUSE, Senior Circuit Judge

(Rehearing denied: December 16, 1993

Mandate: December 23, 1993)

Affirmed by unpublished per curiam opinion.

COUNSEL

Wilburt A. Siegel, Appellant Pro Se. Stephen Peterson Groves, Sr., Carol Brittian Ervin, YOUNG, CLEMENT, RIVERS & TISDALE, Charleston, South Carolina; David Brian McCormack, BUIST, MOORE, SMYTHE & McGEE, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

Wilburt A. Siegel appeals from the district court's order denying relief under 42 U.S.C. #1983 (1988).

Our review of the record and the district court's opinion accepting the recommendation of the magistrate judge discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Siegel v. James Island, No. CA-91-6 (D.S.C. Jan. 14, 1992). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid in the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Wilburt A. Siegel, Plaintiff-Appellant

v.

James Island Public Service District, et al, Defendants-Appellees

FILED

December 16, 1993

No. 92-1204

CA-91-6

O R D E R

The appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Wilburt A. Siegel, Plaintiff-Appellant

v.

James Island Public Service District,

et al, Defendants-Appellees

FILED

December 23, 1993

No. 92-1204

CA-91-6

M A N D A T E

The judgment of this Court dated 11/10/93 takes effect today.

BERT M. MONTAGUE

CLERK

APPENDIX "B"

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

C/A 2:91-0006-8J January 14, 1992

THE HONORABLE SOL BLATT, JR.

WILBURT A. SIEGEL, Plaintiff

vs

JAMES ISLAND PUBLIC SERVICE DISTRICT, et al, Defendants

This pro se civil rights case is before the court on the defendants' motions to dismiss, or in the alternative, for summary judgment. The record includes the report and recommendation of United States Magistrate Judge Robert S. Carr in which he recommends that the defendants' motions to dismiss be granted. The parties were given notice of the right to file objections to the magistrate judge's

report and notice of the consequences for the failure to do so; in response, the plaintiff filed timely objections.

The report and recommendation of the United States magistrate judge was made in accordance with 28 U.S.C. #636 and the local rules of this district concerning reference to a magistrate judge. See United States Magistrates, Local Rule 19, D.S.C.; Social Security Cases, Local Rule 20, D.S.C.; Bowman v. Bordenkircher, 522 F. 2d 209 (4th Cir. 1975). Under 28 U.S.C. #636(b),

> (a) judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further

> evidence or recommit the matter to the magistrate judge with instructions.

Absent timely objection from a dissatisfied party, a district court is not required to review, under a de novo or any other standard, a magistrate judge's factual or legal conclusions. Thomas v. Arn, 474 U.S. 140, 150, 106 S. Ct. 466, 472 (1985). Here, the plaintiff filed objections to the magistrate judge's report. However, after reviewing this matter de novo, the court finds that the magistrate judge properly resolved the issues presented herein and that the plaintiff's objections are without merit; therefore, the magistrate judge's excellent report and recommendation, replete with what this court feels are appropriate and correct factual findings and legal conclusions, granting the defendants'

motions to dismiss is hereby adopted as the order of this court.

IT IS SO ORDERED.

s/Sol Blatt, Jr.

UNITED STATES DISTRICT JUDGE

January 10, 1992

Charleston, S.C.

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Case Number: C/A 2:91-0006-8J

THE HONORABLE ROBERT S. CARR,

Magistrate Judge

Entered August 09, 1991

WILBURT A. SIEGEL, Plaintiff

vs

JAMES ISLAND PUBLIC

SERVICE DISTRICT, ET AL

Defendants

REPORT AND RECOMMENDATION

This pro se civil rights complaint brought pursuant to 42 U.S.C. #1983 is before the undersigned United States Magistrate Judge for a report and recommendation on all defendants' motions to dismiss or in the alternative for summary judgment. 28 U.S.C. #636(b).

In this lawsuit, the Plaintiff, Wilburt A. Siegel (Siegel), seeks redress for alleged constitutional violations committed by the defendants during their participation in the decade long attempt by the defendant James Island Public Service District's (the District) to have Siegel connect his James Island home to the District's sewer system as required by the District's Wastewater Collection Regulation passed March 26, 1979. Siegel has refused to connect his home at 1058 Bradford Avenue, James Island, South Carolina, to the system because he believes that the sewer system is unsafe, unhealthy, and otherwise improper.

A brief history of the prior litigation between the District and Siegel is necessary to an understanding of the instant action.

In 1982, a bench warrant had been issued by the Honorable William Simmons, Chief Magistrate for Charleston County, pursuant to an affidavit filed by the District stating that Siegel had failed to connect to the sewer system in violation of the Wastewater Resolution. The affidavit was ultimately served on Siegel. A trial was held before Magistrate Simmons and Siegel was found guilty of failing to tie into the sewer system.

Siegel appealed that decision to the Charleston County Court of Common Pleas. The Honorable Lawrence E. Richter, Jr., South Carolina Circuit Judge, reversed Siegel's conviction, holding that the penalty provision of 1961 Act, No. 498, was unconstitutional because it was a special law and had been displaced by

a general law. S. C. Code Ann. #6-11-1250 (Law. Co-op. 1976). Section 6-11-1250 provides for a mandatory injunction requiring a citizen to connect to the system. The South Carolina Attorney General's Office and the Ninth Circuit Solicitor's Office decided not to appeal Judge Richter's Order.

Litigation next commenced between the District and Siegel in the Charleston County Court of Common Pleas on November 28, 1984. The District filed an action, No. 84-CP-10-3476, seeking a mandatory injunction to compel Siegel to connect to the District's sewer system.

A hearing was held on the District's motion for a mandatory injunction. Siegel presented oral argument to Judge Edward

B. Cottingham, South Carolina Circuit Judge, that the sewer system was unhealthy and further that is was not technically feasible for him to tie into the system. Judge Cottingham issued his order requiring Siegel to tie into the District's sewer system at his own expense within thirty (30) days of his receipt of a copy of the order dated March 3, 1986.

Siegel appealed Judge Cottingham's order and the South Carolina Court of Appeals affirmed the trial court's decision in a memorandum opinion. Mem.Op. 87-MO-023, March 9, 1987. In light of the Court of Appeals' decision, judgment was entered against Siegel in the Charleston County Court of Common Pleas on March 25, 1987.

Thereafter, William T. Howell, South Carolina Circuit Judge, issued

a rule to show cause and order on the District's motion requiring Siegel to appear before the court to show why he should not be held in contempt for failing to comply with Judge Cottingham's order. A hearing was convened on the rule to show cause on October 26, 1988, at which time the parties appeared and presented oral argument to Judge Howell. On November 1, 1988, Judge Howell issued an order denying Siegel's motion to vacate Judge Cottingham's order and denying Siegel's motion to quash the rule to show cause. Further, Judge Howell found Siegel in contempt of the March 25, 1987 Order of Judgment for his willful failure to tie into the sewer system and sentenced him to six (6) months in jail, providing, Siegel was given (60) days to comply with the contempt order by properly

tieing into the District's sewer system.

Siegel then filed a Writ of Supersedeas in the South Carolina Supreme Court to stay Judge Howell's contempt sentence. The court denied the petition by order dated December 16, 1988.

Judge Howell modified his earlier order on January 6, 1989, and directed Siegel to begin serving his six (6) months term on January 11, 1989. Siegel was transported by the Charleston County Sheriff's Department to Lieber Correctional Institution where he spent one (1) night. Judge Howell then stayed the plaintiff's sentence until another hearing could be held. The next hearing was convened on February 16, 1989, at which time, plaintiff's attorney requested that the judge

enter a new order for contempt and abate the incarceration order because of Siegel's poor health as a result of cancer. Judge Howell revised his order and substituted a one hundred ($100) a day fine in lieu of incarceration. A written order was signed by Judge Howell on February 28, 1989. Siegel is still in contempt.

In February, 1986, Siegel instituted a state court suit against the District arising out of the events dating back to 1982. (Case No. 86-CP-10-802). He alleged abuse of process and malicious prosecution, false arrest, and violation of 42 U.S.C. #1983. Siegel alleged that the District acted improperly in pursuing a misdemeanor complaint in magistrate's court against him for his failure to connect to the

system. He alleged that the District allegedly knew or should have known that the District's enabling act, 1961 Act. No. 498, #9 (penalty section), was unconstitutional.

The defendant District removed the case to federal court. The Honorable Sol Blatt, Jr., United States District Judge, granted the District's motion to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure on the #1983 claims, holding inter alia, that the 1961 Act, No. 498 and South Carolina Code Annotated #6-11-1250, 1251, were constitutional. Siegel did not appeal the dismissal. The remaining state law claims were remanded to state court, and the District was subsequently granted summary judgment on those claims by Judge Howell on December 29, 1988.

In his instant complaint filed January 3, 1991, Siegel asserts that the defendants acting under color of state law either negligently or intentionally caused him to be wrongfully incarcerated and later subject to a one hundred ($100) dollar a day fine to become a lien on his property to inure to the benefit of the District in violation of his constitutional rights. Siegel asserts that all defendants "independently or in concert, did cause plaintiff Siegel to be wrongfully incarcerated, processed, mug, finger printed, hurtful physical examination, held in maximum security, transported by state prison guards to places unknown, causing infliction of mental and emotional distress, real and extreme mental disturbance, humiliation, publicity;

cruel and unusual punishment; all intentional interference with the person of plaintiff Wilburt A. Siegel." (Complaint, Paragraph 9). He claims that "the state, its court, its employees, its elected officials, and its agencies are given unbridled authority under South Carolina Code of Law, #6-11-1250, to violate the civil and legal rights of the citizens of the United States residing within the domain of the James Island Public Service District, Charleston County; without due process of law as guaranteed by the United States Constitution." (Complaint, Paragraph 11). Additionally, "the South Carolina Department of Corrections prison policy and the Charleston County judge's order of incarceration are suspect, unclear, and in violation of

civil and legal rights guaranteed to all citizens of the United States." (Complaint, Paragraph 13).

He alleges that his rights under the fourth, fifth, sixth, seventh, eighth, and ninth amendments to the United States Constitution have been violated by the defendants and seeks a declaratory judgment that South Carolina Code Annotated #6-11-1250 (Law. Co-op. 1976), as well as the James Island Public Service District's Wastewater collection use and rate schedule, are violative of due process rights under the United States Constitution. Siegel also wants this court to render "a determination of the procedure of a county judge to specify location of incarceration for citizen" (sic) as well as "a determination of the procedure of the South Carolina State

Department of Corrections accepting a citizen and then returning same to the Charleston County Sheriff." He also seeks actual and punitive damages.

All defendants have filed motions to dismiss or in the alternative for summary judgment. Rules 12 and 56, Fed.R.Civ.P. On February 22, 1991, a copy of the various motions to dismiss and supporting memorandum were provided to the plaintiff along with an explanation of dismissal and summary judgment procedures as well as a copy of pertinent extracts from Rules 12 and 56 of the Federal Rules of Civil Procedure similar to that required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). The plaintiff has responded by filing a memorandum in opposition to all motions. He has

also filed transcripts of all court proceedings complained of as well as exhibits of photographs of the condition of the sewer system, opinions of various engineers and others of the condition of the sewer system, and in general, all materials which related to the prior decade long dispute. A hearing was convened before the undersigned on March 20, 1991, at which time, Siegel and attorneys for the defendants were present. At the hearing, the parties agreed that the various motions to dismiss would be decided on the moving papers and memorandum without oral argument. Thus, it appears that these matters are ready for consideration.

A review of the record and relevant case law indicates that the defendants' motions to dismiss should

be granted.

STANDARD OF REVIEW

In considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the reviewing court must presume all factual allegations contained in the complaint to be true. Miree v. DeKalb County, Georgia, 433 U.S. 25, 97 S.Ct. 2490 (1977). A presumption of truthfulness is not accorded to legal conclusions and opinions framed as factual allegations. Davidson v. State of Georgia, 662 F. 2d 895 (5th Cir. 1980) (where allegations of unconstitutionality are wholly conclusory, dismissal was proper); Bryan v. Stillwater Board of Realtors, 578 F. 2d 1319 (10th Cir. 1977) (conclusions or opinions are not deemed admitted for purposes of a 12(b)(6) motion).

A 12(b)(6) motion should be granted if an affirmative defense is apparent from the face of the complaint. Further if the allegations of the complaint demonstrate that the defendant enjoys absolute immunity from the claims asserted, dismissal is required. Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984 (1976).

Section 1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in action at law, suit in equity, or proper proceeding for redress."

42 U.S.C. #1983. Section 1983 was enacted to override certain kinds of state laws, to provide a remedy where state law was inadequate, to provide a federal remedy where state remedy though adequate in theory was not available in practice, and to provide a remedy in federal court supplementary to any other state remedy. Monroe v. Pape, 365 U.S. 167 (1961), overruled in part, Monell v. Dept.of Social Services, 436 U.S. 658 (1978). This section simply creates a cause of action and is not jurisdictional. Hagans v. Levine, 415 U.S. 528 (1974). It provides no substantive rights, only a remedy. Chapman v. Houston Welfare Rights Organization, 441 U.S. 600 (1979).

The burden is on the plaintiff asserting a deprivation of federally protected rights to show that a

substantial federal question exists in order to confer jurisdiction. Goldsmith v. Mayor of Baltimore, 845 F.2d 61 (4th Cir. 1988). A claim is insubstantial if it is obviously without merit or clearly foreclosed by authoritative precedent. Hagans v. Levine, 415 U.S. 528 (1974); Crosby v. Holsinger, 816 F. 2d 162 (4th Cir. 1987).

JAMES ISLAND PUBLIC SERVICE DISTRICT

Siegel has sued the James Island Public Service District and George W. Flynn, George W. Witham, Barbara M. Ladson, Sylvia F. Peters, John B. Bryant, Nancy H. Hadley, Ray J. Patterson, Jr., constituting the membership of the Commissioners of the James Island Public Service District, and Robert E. Welch, its Manager, as well as Edwin B. Quinn, its Wastewater Superintendent.

Siegel's underlying theory of his claims against these defendants is that they acted improperly in pursing a complaint against him for his failure to connect to the sewer system. He asserts that they "caused" him to be incarcerated.

A review of the plaintiff's complaint and Judge Howell's order indicate that Judge Howell found Siegel in contempt of court for his willful failure to tie into the system. Siegel's incarceration was pursuant to an order of Judge Howell, not pursuant to the District's order. Judge Howell allowed Siegel sixty (60) days to tie into the system and then determined in his discretion that incarceration was the appropriate sanction for Siegel. As a matter of law, the District lacks the authority to cause the plaintiff

to be transported or incarcerated. The complaint fails to state any facts to the contrary. Therefore, these defendants are entitled to dismissal of Siegel's action against them.

Second, in relation to the District, Siegel claims that the Wastewater Resolution and South Carolina Code Annotated #6-11-1250 are unconstitutional and asks this court to declare them unconstitutional.

In response, the District raises the affirmative defense of res judicata, which may be raised by means of a Rule 12(b) motion particularly if it appears from the face of the complaint and documents from the public record. Fletcher v. Bryan, 266 F.2d 72 (4th Cir. 1959), Mann v. Peoples First National Bank & Trust Co., 209 F.2d

570 (4th Cir. 1954); Ellis v. Cates, 178 F.2d. 791 (4th Cir. 1952).

In order to properly maintain a defense of res judicata, the defendant must show that the issue in the present action is identical to the one decided in the prior proceeding, that the prior litigation reached a final judgment on the merits, and that the party against whom the plea is asserted was a party, or in privity with a party, to the prior adjudication. Blonger-Tongue Laboratories, Inc. v. Univ. of Illinois Foundation, 402 U.S. 313, 323-324 (1971).

Siegel has argued that these statutes are unconstitutional in the prior state court action. Siegel v. James Island Public Sewer District, Cause of action No. 86-CP-10-802. It appears from the record

that a full, fair, and reasonable opportunity to litigate those issues was presented Siegel and the District. Siegel alleged that the District's enabling Act, 1961 Act, No. 498, was unconstitutional and further that no such criminal charges could be brought under 1965 Act., No. 397. That Act is codified as South Carolina Code Annotated #6-11-1250 et. seq. The case was removed to federal court where the Honorable Sol Blatt, Jr. granted the District's motion to dismiss the #1983 claims holding that 1961 Act No. 498, and South Carolina Code Annotated #6-11-1250, 1251 were constitutionl statutes. No appeal was taken from the holding. Judge Blatt's order remains the law of the case.

After the state law claims were

remanded to state court, Judge Howell cited Judge Blatt's constitutionality finding to defeat Siegel's malicious prosecution and abuse of process claims:

> "There is no basis to support the plaintiff's claim that the District should have known from this language that a judge would later rule that #9 of Act No. 498 was unconstitutional. Indeed, Federal District Court Judge Sol Blatt, Jr., has reviewed the provisions in question and held them to be constitutional ..."

Siegel appealed Judge Howell's order granting summary judgment and the constitutionality of South Carolina Code Annotated #6-11-1250 was again addressed. The South Carolina Supreme Court affirmed the trial court's order of summary judgment and denied Siegel's petition for a rehearing on January 25, 1991. S.C. Supreme Court Op. No. 90-MO-323.

In summary, the issue of the constitutionality of these statues has been litigated and upheld before both state and federal judges. Siegel should not be allowed to relitigate these issues which have been actually litigated and directly determined. The defense of res judicata is applicable and entitles the James Island Public Service District and the defendants associated with the District to dismissal from the action.

SINKLER & BOYD, P.A.

Siegel has also sued the law firm of Sinkler & Boyd, P.A. (the Sinkler firm) and its predecessor firm, Sinkler, Gibbs & Simons, as well as individual attorneys, V. Clair Allen, Stephen E. Darling, Thomas C. Hildebrand, Jr., the law firm's employees. The Sinkler firm

represented the defendant District for many years. In 1984, the firm was retained by the District to institute an action against Siegel. Next, the Sinkler firm filed, at the direction of the District, a rule to show cause after Siegel failed to comply with the March 25, 1987 order of judgment.

A review of the record and relevant case law indicates that the Sinkler firm defendants should be dismissed from the action because the plaintiff cannot demonstrate that they were acting "under color" of state law.

The sine qua non of a civil rights action is state action under the fourteenth amendment. West v. Atkins, 487 U.S. 42 (1988); Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982). State action is present if

the conduct allegedly causing the constitutional deprivation may be fairly attributed to the state. West v. Atkins, 487 U.S. 42 (1988). A two-factor test is used to determine "fair attribution":

> a. Exercise of right created by state: the deprivation is caused by the exercise of a right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible.
>
> b. And by a state actor: party charged with deprivation must be a state actor, that is, must be a state official, or has acted together with a state official, or engaged in conduct that is otherwise attributable to the state.

Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982).

The Sinkler firm is a private law firm which had been retained by the District to represent the District. The individual lawyer

defendants were members of that firm. There is no indication that the relationship between the Sinkler firm and the District is one other than that of attorney-client; it is a contractual matter and is governed by the same principles that govern the firm's relationship with its other clients, Siegel's conclusory allegations otherwise notwithstanding. Hence, actions taken by the firm in this matter were those of a private law firm acting on behalf of its client. And while an attorney who conspires with state officials to violate constitutional rights acts under the color of state law, Tower v. Glover, 467 U.S. 914 (1984), a plaintiff cannot resist a motion to dismiss by doing nothing more than making naked assertions of conspiracy. Phillips v. Washburn,

746 F. 2d 782 (11th Cir. 1984).

In short, these defendants acted as privately retained counsel for the purpose of initiating certain legal proceedings on behalf of their client, the District. Such action does not constitute action taken under color of state law for #1983 purposes. Hence, these defendants are entitled to dismissal of the complaint against them for failure to state a claim.

JUDGE HOWELL

Judge William Howell has moved for dismissal asserting that the action is barred against him by the doctrine of absolute judicial immunity. A review of the record and relevant case law indicates that Judge Howell is entitled to dismissal as a result of this defense.

On the face of his complaint,

Siegel acknowledges that Judge Howell had jurisdiction of his cases pursuant to South Carolina Code of Laws #6-11-1250. (Complaint pg. 11). Further, it is undisputed that Siegel's claim against Judge Howell arises out of acts Judge Howell took in his judicial capacity.

The United States Supreme Court early recognized that it was of highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, "(should) be free to act upon his own convictions without apprehension of personal consequences to himself." Bradley v. Fisher, 13 Wall. 335, 347, 20 L.Ed. 646 (1872). Siegels' disagreement with Judge Howell's order does not strip Judge Howell of his absolute judicial immunity. The immunity

applies "however erroneous the act may have been and however injurious in its consequences". Id. at 347.

The United States Supreme Court has held that this common law absolute immunity of judges for their judicial acts shielded them in #1983 litigation. Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213 (1967).

Next, reading the pro se complaint liberally, it appears that Siegel may be requesting declaratory or injunctive relief in his prayer for "a determination of the procedure of a county judge to specify location of incarceration for citizens." (Siegel Complaint, Paragraph 4). In this regard, it appears that Siegel lacks standing to seek such relief and this court lacks jurisdiction to hear it. U.S. Const. Art. III, #2. The judicial power of the federal

courts is limited to adjudication of cases or controversies. A case or controversy exists depending on "whether the plaintiff seeking relief has alleged a sufficient personal stake in the outcome to assure that the court will be called upon to resolve real issues between genuine adversaries rather than merely give advisory opinions with respect to abstract or theoretical questions". Fowler v. Alexander, 478 F. 2d 694 (4th Cir. 1973), quoting, Abele v. Markle, 452 F.2d 1121, 1124 (2nd Cir. 1971). Siegel indicates in his complaint that he is no longer incarcerated or under an order of incarceration. Even read liberally, it is unclear what real or immediate threat he perceives. Therefore, Siegel lacks standing to raise this issue.

COUNTY OF CHARLESTON,

J. ALTON CANNON and ROBERT MILLER

The defendants, County of Charleston, J. Alton Cannon, Jr., County Sheriff, and Robert Miller, its undersheriff, moved to dismiss the complaint for failure to state a claim upon which relief can be granted for the reason that their alleged wrongful conduct was pursuant to a judicial order and, therefore, these defendants are immune from liability by virtue of derivative judicial immunity.

These defendants' motion is well taken and should be granted. Siegel was transported to and from prison and jail and processed pursuant to Judge Howell's order and, therefore, they enjoy derivative judicial immunity for their actions. See, McCray v. Maryland, 456 F.2d 1 (4th

Cir. 1972); Lockhart v. Hoenstine, 411 F.2d 455 (3rd Cr.), cert. denied, 396 U.S. 941 (1969).

SOUTH CAROLINA

DEPARTMENT OF CORRECTIONS

Siegel contends that defendant South Carolina Department of Corrections, its Commissioner Parker Evatt, and the Warden of Lieber Correctional Institution P. Douglas Taylor, violated his constitutionally protected rights when Siegel was incarcerated at Lieber Correctional Institution on January 11, 1989. It appears that these defendants are subject to dismissal from the action because the suit is barred by eleventh amendment of the United States Constitution and this agency and these state officials acting in their official capacities are not "persons" within the meaning and

scope of #1983.

It is undisputed that the Department of Corrections is a state agency and its officers are state officials. 42 U.S.C. #1983 is unavailable to Siegel to assert his claims against them in federal court.

The eleventh amendment bars suits directly against the state or its agencies, regardless of the nature of the relief sought unless the state waives its immunity. Pennhurst State School & Hospital v. Holderman, 465 U.S. 89 (1984). The state or its agencies have not waived their immunity nor consented to this action to permit Siegel's suit against them in this forum. See, Moreno v. University of Maryland, 645 F.2d 217 (4th Cir. 1981), aff'd., 458 U.S.1 (1982).

Further, the United States

Supreme Court has specifically ruled that neither a state nor its officials acting in their official capacities are "persons" under #1983 further barring Siegel's suit. Will v. Michigan Dept. of State Police, 109 S. Ct. 2304 (1989).

A review of Siegel's complaint reveals that he is suing Parker Evatt and P. Douglas Taylor, in their official capacities as they acted pursuant to South Carolina law. Further, it is undisputed that the South Carolina Department of Corrections is created pursuant to South Carolina Code Annotated #24-1-30 (Law. Co-op. 1989), which statute provides that the Department of Corrections is an administrative agency of the State of South Carolina government. The statute states that the Department's function is to implement and carry

out the policy of the state with respect to its prison system. Sued in their official capacities, the Commissioner and Warden are state officials and while acting in their official capacities, they are in effect, alter egos of the State of South Carolina. Therefore, plaintiff's #1983 suit against the Department of Corrections and its officials is barred under Will.

Still immunity does not necessarily extend to a #1983 action for prospective declaratory or injunctive relief. Ex Parte Young, 209 U.S. 123, 58 S. Ct. 441 (1908). Construing the complaint liberally, it appears that Siegel may be requesting such relief. The Complaint request "a determination of the procedure of the South Carolina Department of Corrections accepting a

citizen and then returning same to Charleston County Sheriff." (Complaint Paragraph 5). Again, the plaintiff lacks standing to seek this relief and it appears this court lacks jurisdiction to hear it. As noted previously in the discussion of claims against William T. Howell, Article III, #2 of the Constitution limits the judicial power of the federal courts to adjudication of "cases" or "controversies." Existence of a case or controversy depends upon whether the person seeking relief has alleged a sufficient personal stake in the outcome to assure that the court will be called upon to resolve real issues between genuine adversaries rather than to merely give advisory opinions with respect to abstract or theoretical questions." Fowler

v. Alexander, 478 F. 2d 694, 696 (4th Cir. 1973), quoting Able v. Markle, 452 F.2d 1121, 1124 (2nd Cir. 1971).

From the face of the complaint, it is clear that Siegel is no longer incarcerated nor is the order of incarceration still in effect. Therefore, the plaintiff cannot show that he is in real, immediate danger of sustaining some direct injury as a result of the challenged official conduct and is, therefore, not entitled to declaratory or injunctive relief.

Accordingly, for the foregoing reasons, all defendants' motions to dismiss should be granted.

Respectfully submitted,

s/Robert S. Carr

United States Magistrate Judge

Charleston, South Carolina

August 5, 1991

The District did not move for an order of incarceration in front of Judge Howell. Instead, they prayed for "such sanctions as the court deems necessary to ensure compliance with the above noted orders and judgment". (District's Petition for Rule to Show Cause).

(Referenced at page 28-A)

APPENDIX "D"

UNITED STATES CONSTITUTION

ARTICLE III

Section 2. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;-to all Cases affecting Ambassadors, other public Ministers and Consuls;-to all Cases of admiralty and maritime Jurisdiction;-to Controversies to which the United States shall be a Party;-to Controversies between two or more States;-(between a State and Citizens of another State;-)* between Citizens of different States-between Citizens of the same State claiming Lands under Grants of different States, (and between a State, or the Citizens thereof, and foreign

States, Citizens or Subjects.)*

*Changed by the Eleventh Amendment.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

AMENDMENT XI

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

(Ratified Feb. 7, 1795)

APPENDIX "E"

UNITED STATES CONSTITUTION

AMENDMENT IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

(Effective Dec. 15, 1791)

AMENDMENT V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia,

when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

(Ratified Dec. 15, 1791)

AMENDMENT VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

(Ratified Dec. 15, 1791)

AMENDMENT VII

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

(Ratified Dec. 15, 1791)

AMENDMENT VIII

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

(Ratified Dec. 15, 1791)

AMENDMENT IX

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

(Ratified Dec. 15, 1791)

AMENDMENT XIV

"Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(Ratified July 9, 1868)

APPENDIX "F"

STATE OF SOUTH CAROLINA

ACTS AND JOINT RESOLUTIONS

STATUTES AT LARGE

Local and Temporary Laws-1961

ACT 498

An Act To Create The James Island Public Service District In Charleston County And To Provide That Bonds Of Such District May Be Issued In An Amount Not To Exceed One Hundred Thousand Dollars And To Provide For The Payment Of The Bonds.

SECTION 9. Penalties.-Any person, firm or corporation, wilfully failing or refusing to comply with any rule or regulation of the Commission promulgated or adopted under authority duly vested in it, after written notice of such rule or regulation and demand for compliance therewith, shall be guilty of a

misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding twenty-five dollars or imprisonment of not exceeding ten days; provided, that each day after conviction of such failure or refusal to comply that the same shall continue shall constitute a separate offence, and be subject to like punishment.

SECTION 10. Further.-It shall be unlawful for any person to wilfully injure or destroy, or in any manner hurt, damage, tamper with or impair any facility of the District, or any part of the same, or any apparatus or equipment incident thereto or used or useful in the operation of such facility, or to obtain water from its water distribution system or to connect to its sewers except in accordance with the regulations

promulgated by the Commission. Any person so offending shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned for not more than thirty days at the discretion of the court, and shall be further liable to pay all damages suffered by the District.

APPENDIX "G"

SOUTH CAROLINA CODE OF LAWS

(1976, as amended)

VOLUME 2 Annotated

MUNICIPAL CORPORATIONS

Local Government Provisions

Applicable to Special Purpose

Districts and other

Political Subdivisions

Article 7 Additional Powers of Special Purpose or Public Service District as to Sewage Collection and Disposal

§6-11-1210. Declaration of purpose.

..."It is the legislative intent of this article that it shall be deemed complementary and supplementary to existing laws relating to each such district and to add to the powers, functions and duties committed to the several governing bodies thereof in order that such

districts may fulfill their function of preserving the public health and provide for all those who own, use or occupy dwellings, commercial buildings or other structures therein. In enacting this law, the General Assembly exercises its general police powers having found that such exercise was necessary for the maintenance and preservation of the health of the inhabitants of the State. Nothing herein contained shall be construed to be in derogation of the powers of the Department of Health and Environmental Control".

§6-11-1250. Regulations may be enforced by courts.

"Paragraph (3) of §6-11-1230 authorizes any commission in the interest of the health of the district to adopt regulations requiring the use

of its sewer system and regulations generally with respect to the discharge of sewage and the use of privies, septic tanks and any other type of sewage facilities. Any commission is expressly authorized to apply to any court of general jurisdiction for the enforcement of any such regulations within the district governed by it through the means of mandatory injunction or other remedial process; provided such regulation has been duly adopted in the fashion prescribed by paragraph (3) of §6-11-1230."

§6-11-1260 Manner in which powers conferred shall be exercised; special acts superseded.

"The powers conferred herein shall hereafter be exercised by all commissions in the manner and to the extent hereinbefore set forth, and,

to that end, the provisions of this article shall supersede the analogous provisions of all special acts empowering commissions to exercise any of the powers herein before conferred".

APPENDIX "H"

JAMES ISLAND PUBLIC SERVICE DISTRICT

James Island, South Carolina

WASTEWATER COLLECTION SYSTEM

USE AND RATE RESOLUTION

Adopted March 26, 1979

ARTICLE I

Definitions

Section 1.13-Public Sewer shall mean a sewer in which all owners of abutting properties have equal rights and is controlled by the District.

ARTICLE II

USE OF PUBLIC SEWERS REQUIRED

Section 2.04-The owner of all houses, buildings, or properties used for human occupancy, employment, recreation or other purpose situated within this District and abutting on any street, alley, or right-of-way in which there shall be located a public sewer of the District is hereby

required at his expense to connect directly with the proper public sewer in accordance with provisions of this resolution within 90 days after written notice from the Commission to the property owner requiring such property owner to make connection thereto, provided that said sewer shall be within 300 ft. of the building and said connection to the public sewer shall be technically feasible without the pumping of sewage.

ARTICLE VIII

Penalties

Section 8.02 - Failure to comply with this resolution shall subject the person to a penalty of not less than $100 per day and payment of all damages incurred by the District's sewer system as a result of non-compliance.

ARTICLE IX

Validity

Section 9.02 - The commission reserves the right to take such immediate action for emergencies, not specifically covered herein, as it may deem necessary in the interest of Public Health and Safety and further reserves the right to amend this resolution, in part or in whole, whenever it may deem necessary, but such right will be exercised only in the manner established or prescribed for such matters, including but not limited to, public notice as required prior to final action.

EXHIBIT "I"

JAMES ISLAND PUBLIC SERVICE DISTRICT

COMMISSION-RULES OF PROCEDURE

June 9, 1980

Except: Page 8 RULE 20

Ordinances, resolutions, motions, regulations, contracts.

Page 10(i) All actions of the Commission shall be taken by resolution, except that any action of the Commission which provides for raising revenue, appropriating funds or incurring indebtedness, or which provides a penalty or establishes a rule or regulation for the violation of which a penalty is imposed, shall be by ordinance or regulation and except that approval of purely administrative matters may be accomplished by motion duly adopted and recorded in the minutes of the meeting.

APPENDIX "J"

SOUTH CAROLINA CODE OF LAWS

(1976, as amended)

CHAPTER 78

South Carolina Tort Claims Act

No. 463, eff. July 1, 1986

§15-78-10. Short title.

This chapter may be cited as the "South Carolina Tort Claims Act".

§15-78-20. Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to

do everything which might have been done...It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion...Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

§15-78-30. Definitions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards,

divisions, instrumentalities, and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(i) "Scope of official duty" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

§15-78-40. Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

§15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(c) A person, when bringing an action against a governmental entity under the provisions of this chapter, must name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant; ...

APPENDIX "K"

SOUTH CAROLINA CODE OF LAWS

(1976, as amended)

TITLE 24

CORRECTIONS, JAILS, PROBATIONS,

PAROLES AND PARDONS

Chapter 3. STATE PRISON SYSTEM

§24-3-10 and §24-3-20

§24-3-10. General penitentiary and prison of State.

The Penitentiary at Columbia in Richland County shall be the general penitentiary and prison of the State, for the reformation as well as the punishment of all offenders, in which shall be securely confined, employed and governed, in the manner herein directed, all offenders who shall have been convicted and sentenced according to law to the punishment of solitary imprisonment or confinement therein at hard labor.

§24-3-20. Convicted persons shall be in custody of Board of Corrections; Board shall designate place of confinement; allowing prisoners to work at paid employment or participate in training programs; litter removal; authority to establish restitution program; judge to set maximum property loss for restitution program.

(a) Notwithstanding the provisions of §24-3-10, any person convicted of an offense against the State of South Carolina and committed to the State Penitentiary at Columbia shall be in the custody of the Board of Corrections of the State of South Carolina, and the Board shall designate the place of confinement where the sentence shall be served. The Board may designate as a place of confinement any available, suitable,

and appropriate institution or facility, including a county jail or prison camp, whether maintained by the State Department of Corrections or otherwise.

APPENDIX "L"

EXCERPT: TRANSCRIPT OF HEARING

BEFORE THE HONORABLE SOL BLATT

July 6, 1988

USDC #2:86-775-8

Charleston Co. #86-CP-10-0802

Wilburt A. Siegel vs

James Island Public Service District

The only violation of 1983 alleged is that the arrest, that an illegal warrant was taken out, which means that it was an unlawful arrest, the warrant being illegal because -- where did I have that. The warrant being illegal because the Statute was either a violation of the Constitution and the -- this case it would be the United States Constitution. Or the Act had been superseded and was of no -- was of no effect and they knew that.

Now, I've looked at the -- you

got all the Act 498. Insofar as the Act being superseded, I have read 6-11-1210, the first -- the last paragraph, speaking of the legislative intent. "It is the legislative intent of this article that it should be deemed complimentary and supplementary to existing laws relating to each such district and to add to the powers, functions and duties committed to the several governing powers thereof in order that such districts may fulfill their function of preserving the public health, etcetera.

Now, so its complimentary and supplementary to existing laws and its purpose is to add to the power of the governing bodies. That's the purpose of the Act. Well one involves -- one 6-11-12 -- I believe it is -- 1250 or 1260 -- 1250 involves

civil relief and 1260 says that this -- the powers herein shall supersede the analogous provision of all special acts.

Well, when you look at the legislative intent as expressed in 6-11-1210 and you look at 6-11-1250, 60, I don't believe, and I so hold, that 6-11-1210 and including 1250 and 1260, superseded 498. I think it's a supplement. One is a civil penalty -- one is a civil penalty and I don't think it's an analogous provision. Now if 498 had involved a civil penalty, 498 involved a civil penalty, and then I think that would be an analogous provision and it might very well have superseded.

I just use this as an illustration. If 49 -- if 611 -- 6-11-1210 F. 2d had provided to a method by -- I mean 498 had only

provided a fine of twenty-five dollars, a civil remedy and no criminal provision, and 6-11-1210 et. seq. had provided a way where they could have increased it from twenty-five to fifty or twenty-five -- up to two hundred, then I think that would have been an analogous provision and it would have been superseded. But I don't believe where you have one provision -- where you have the legislative intent expressed so clearly, it's only a supplemental to and enables and adds to the powers of the governing bodies.

I'm convinced that it didn't supersede 498. Now whether 498 is unconstitutional under the Federal Constitution -- so I hold as a matter of law, reading 498, 6-11-1210, 6-11-1250 and 6-11-1260 and the

regulation -- what is the regulation?

Mr. Kulp: 2.04

The Court: 2.04 is the civil.

Mr. Kulp: Well, the penalties are set forth in 8.02.

The Court: Well, that's all a part of the regulations that they referred to. When you read all of those, I'm convinced that 498 was not superseded and 498 is still in force and in effect, its constitutional.

Supreme Court, U.S.
FILED
MAR 30 1994
OFFICE OF THE CLERK

No. 93-1472

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN, GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT, SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF RESPONDENTS SINKLER & BOYD, P.A., THOMAS C. HILDEBRAND, JR., V. CLAIR ALLEN, AND STEPHEN E. DARLING, IN OPPOSITION

DAVID B. MCCORMACK
BUIST, MOORE, SMYTHE & MCGEE, P.A.
5 Exchange Street
Charleston, SC 29402
(803) 722-3400

Counsel for Respondents Sinkler & Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen, and Stephen E. Darling

(Counsel of Record)

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208

24 pp

QUESTION PRESENTED

Respondents Sinkler & Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen, and Stephen E. Darling believe that the only question presented, as it relates to them, is properly stated as follows:

> **Whether the lower courts were correct in holding that the actions of a privately retained law firm, in instituting state court legal proceedings on behalf of their client, did not constitute action taken under color of state law for purposes of liability under 42 U.S.C. §1983.**

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS AND JUDGMENTS BELOW	2
JURISDICTION	4
STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	5
SUMMARY OF THE ARGUMENT	10
ARGUMENT	10
THE ACTIONS OF THE LAW FIRM AND THE INDIVIDUAL ATTORNEY DEFENDANTS IN THIS CASE PROVIDE NO BASIS FOR ASSERTING LIABILITY AGAINST THEM UNDER 42 U.S.C. §1983.	
CONCLUSION	18

TABLE OF AUTHORITIES

Cases:	Page
Adickes v. S.H. Kress & Company, 398 U.S. 144 (1970)	14
Anderson v. Byars, 505 F.Supp. 32 (W.D.Okla. 1980).	16
Bates v. New York City Transit Authority, 721 F.Supp. 1577 (E.D.N.Y. 1989)	14, 17
Dahlberg v. Becker, 748 F.2d 85 (2nd Cir. 1984), cert. denied, 470 U.S. 1084 (1985)	16
Deas v. Potts, 547 F.2d 800 (4th Cir. 1976)	15
Donlan v. Smith, 662 F.Supp. 352 (D.Md. 1986), aff'd, 820 F.2d 1219 (4th Cir. 1987).	16
Goetz v. Windsor Central School District, 593 F.Supp. 526 (N.D.N.Y. 1984)	17
Gomez v. Toledo, 446 U.S. 635 (1980).	11
Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980), cert. denied, 454 U.S. 1141 (1982).	15
Hansen v. Ahlgrimm, 520 F.2d 768 (7th Cir. 1975)	16
Jackson v. State of South Carolina, 498 F.Supp. 186 (D.S.C. 1979)	16
Kregger v. Posner, 248 F.Supp. 804 (E.D.Mich.S.D. 1966).	15
Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982)	12, 13

TABLE OF AUTHORITIES - CONTINUED

Masel v. Industrial Commission of Illinois, 541 F.Supp. 342 (N.D.Ill.E.D. 1982) 17
Phillips v. Singletary, 350 F.Supp. 297 (D.S.C. 1972) 14
Pritt v. Johnson, 264 F.Supp. 167 (M.D.Pa. 1967). 14
Polk County v. Dodson, 454 U.S. 312 (1981). 14, 15
Russell v. Millsap, 781 F.2d 381 (5th Cir. 1985), cert. denied, 479 U.S. 826 (1986) . . . 16
Seigel v. James Island Public Service District, et al., No. 92-1204 (4th Cir. Nov. 10, 1992). 2
Sturm v. Schrank, 43 B.R. 755 (S.D.N.Y. 1984) 14
Taylor v. Diznoff, 633 F.Supp. 640 (W.D. Pa. 1986) 16
U.S. v. Classic, 313 U.S. 299 (1941) 14
West v. Atkins, 487 U.S. 42 (1988) 12

Federal Statutes:

28 U.S.C. §1254(1). 4
28 U.S.C. §1257(3). 4
42 U.S.C. §1983 . . . . . 5, 8, 10, 11, 15, 18, 19

Miscellaneous:

Sup. Ct. R. 10. 4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

Wilburt A. Seigel,

Petitioner,

v.

James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District, Sinkler & Boyd, P.A.; Thomas C. Hildebrand, Jr.; V. Clair Allen; Stephen E. Darling; County of Charleston; William T. Howell, Judge; J. Alton Cannon Jr., Sheriff, Charleston County; Robert Miller, Jr., Undersheriff, Charleston County; South Carolina Department of Corrections; Parker Evatt, Commissioner, South Carolina Department of Corrections; P. Douglas Taylor, Warden, Lieber Correctional Institution,

Respondents,

Brief of Respondents Sinkler & Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen and Stephen E. Darling, In Opposition

---

Respondents Sinkler and Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen and Stephen E. Darling respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, per curiam opinion, Seigel v. James Island Public Service District, et al., No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's

Petition for Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but is set out in Appendix B of Petitioner's Petition for Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Certiorari, at pages 10-A through 47A.

The Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix A to Petitioner's Petition for Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 U.S.C. §1257(3). No such subsection of that statute exists, however, nor does 28 U.S.C. §1257 apply to this case, since the opinion below was rendered by a federal court of appeals, not a state court.

Presumably, Petitioner means to rely on 28 U.S.C. §1254(1). This case, however, presents no special or important reason for granting certiorari. Sup. Ct. R. 10. Specifically, the decision of the Court of Appeals in this case is not in conflict with either the decision of another United States Court of Appeals or with the decisions of this Court. Additionally, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. Nor does it depart from, or

sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This case arose as a result of a decade long attempt by the James Island Public Service District (the "District") to have Petitioner, Wilburt A. Seigel ("Seigel") connect his James Island home to the

District's sewer system as required by the District's Wastewater Collection Regulation passed March 26, 1979. Seigel has refused to connect his home at 1058 Bradford Avenue, James Island, South Carolina, to the system because he believes that the sewer system is unsafe, unhealthy and otherwise improper.

Respondent Sinkler & Boyd, P.A. ("the Sinkler firm"), is a private law firm with offices in Charleston, Columbia and Greenville, South Carolina. It, and its predecessor firm, Sinkler Gibbs & Simons, have long represented the District. Respondents Stephen E. Darling and Thomas C. Hildebrand, Jr. are members of the Sinkler Firm. Respondent V. Claire Allen is a former member of the Sinkler firm.

In 1984, the Sinkler firm was retained by the District to institute an action against Seigel. The purpose of that suit

was to obtain an injunction requiring Seigel to connect to the District's sewer system. An Order granting the requested relief was granted by the trial court and affirmed by the South Carolina Court of Appeals and Judgment was entered on March 25, 1987.

Thereafter, in 1988, the Sinkler firm filed, at the direction of the District, a Rule to Show Cause why an Order should not be issued finding Seigel in contempt for his failure to comply with the March 25, 1987 Order of Judgment. On October 26, 1989, South Carolina Circuit Court Judge William T. Howell ("Judge Howell") adjudged Seigel in contempt for failure to comply with the March, 1987 Order and sentenced him to six months in jail. However, Judge Howell granted Seigel sixty (60) days within which to hook up to the District's sewer system so as to avoid

incarceration. Seigel then filed a Writ of Supersedeas in the South Carolina Supreme Court to stay Judge Howell's contempt sentence. The Court denied the Petition by Order dated December 16, 1988.

On January 3, 1991, Seigel filed the present complaint alleging violation of 42 U.S.C. §1983. Among the Defendants named in this lawsuit were the Sinkler firm and the individual attorneys who represented the District in the underlying action against Seigel.

Subsequently, all Defendants filed Motions to Dismiss. After Seigel responded to these Motions, a hearing was held before the United States Magistrate on March 20, 1991, at which time all parties agreed that the Magistrate would decide the Motions on the moving papers and memoranda without oral argument. On August 5, 1991 the Magistrate issued his

Report and Recommendation which granted all Defendants' Motions to Dismiss.

Seigel timely filed objections to the Magistrate's Report and the matter was reviewed, de novo, by the United States District Judge. By Order dated January 10, 1992, the District Judge adopted the Magistrate's Report and Recommendation as the Order of the Court, thereby dismissing Seigel's Complaint as to all Defendants.

Thereafter, Seigel timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. In an unpublished per curium opinion, dated November 10, 1993, the Fourth Circuit affirmed the District Court Order. Thereafter, by Order dated December 16, 1993, the Fourth Circuit denied Seigel's Petition for Rehearing. Seigel now seeks a Writ of Certiorari to

review the decisions below dismissing his lawsuit.

SUMMARY OF THE ARGUMENT

In all matters related to this case, the law firm and the individual attorney Defendants acted solely as privately retained counsel for the purpose of initiating certain legal proceedings on behalf of their client in South Carolina state court. The lower courts were correct in holding that such action did not constitute action under color of state law for 42 U.S.C. §1983 purposes; and in dismissing the Plaintiff's Complaint against the law firm and the individual attorney Defendants.

ARGUMENT

THE ACTIONS OF THE LAW FIRM AND THE INDIVIDUAL ATTORNEY DEFENDANTS IN THIS CASE PROVIDE NO BASIS FOR

ASSERTING LIABILITY AGAINST THEM UNDER 42 U.S.C. §1983.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In Gomez v. Toledo, 446 U.S. 635 at 640 (1980), the United States Supreme Court set forth the two requirements necessary to state a cause of action under 42 U.S.C. § 1983:

> First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right

> acted under color of state or territorial law.

The sine qua non of civil rights action is state action under the Fourteenth Amendment. West v. Atkins, 487 U.S. 42 (1988); Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982). State action is present if the conduct allegedly causing the constitutional deprivation may be fairly attributed to the state. West v. Atkins, 487 U.S. 42 (1988). A two-factor test is used to determine "fair attribution":

> a. Exercise of right created by state: the deprivation is caused by the exercise of a right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible.
>
> b. And by a state actor: party charged with deprivation must be a state actor, that is, must be a state official, or has acted together with a state official, or engaged in conduct that is otherwise attributable to the state.

The Sinkler firm is a private law firm which was retained by the District to represent it in certain state court proceedings. The individual attorney Defendants are, or were, members of that firm. The relationship between the Sinkler firm and the District was one of attorney-client, was purely contractual, and was governed by the same principles as governed the Sinkler firm's relationship with any of its other clients. Any actions taken by the Sinkler firm, or the individual attorneys, in this matter were thus those of a private law firm acting on behalf of its client.

Conduct of a private individual or entity may, in certain circumstances which are inapplicable to this case, constitute action under color of state law. See, e.g., Lugar v. Edmondson Oil Company, Inc., 457 U.S. 922 (1982); Adickes v. S.H.

Kress & Company, 398 U.S. 144 (1970). However, the Supreme Court has held that "a person acts under color of state law only when exercising power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law'." Polk County v. Dodson, 454 U.S. 312 at 317 (1981) quoting U.S. v. Classic, 313 U.S. 299, 326 (1941). The actions of the private attorneys in this case clearly do not meet this test.

The mere fact that an attorney is licensed by the state and is considered an officer of the court has been held to be insufficient to find that he acts under color of state law. See, e.g., Bates v. New York City Transit Authority, 721 F.Supp. 1577 (E.D.N.Y. 1989); Sturm v. Schrank, 43 B.R. 755 (S.D.N.Y. 1984); Phillips v. Singletary, 350 F.Supp. 297 (D.S.C. 1972); Pritt v. Johnson, 264

F.Supp. 167 (M.D.Pa. 1967); Kregger v. Posner, 248 F.Supp. 804 (E.D.Mich.S.D. 1966).

The law is also well established that the action of an attorney on behalf of his clients in a legal proceeding does not constitute action under color of state law for 42 U.S.C. § 1983 purposes. This general rule has been applied widely and includes actions by, inter alia:

(1) Public Defenders, see, e.g., Polk County v. Dodson, 454 U.S. 312 (1981);

(2) Private counsel retained by the State to represent indigents, see, e.g., Hall v. Quillen, 631 F.2d 1154 (4th Cir. 1980), cert. denied, 454 U.S. 1141 (1982);

(3) Private counsel retained by private parties, see e.g., Deas v. Potts, 547 F.2d 800 (4th Cir. 1976);

Donlan v. Smith, 662 F.Supp. 352 (D.Md. 1986), aff'd, 820 F.2d 1219 (4th Cir. 1987) (private attorneys representing wife in domestic dispute who obtained contempt order which led to imprisonment); Jackson v. State of South Carolina, 498 F.Supp. 186 (D.S.C. 1979). See also, Dahlberg v. Becker, 748 F.2d 85 (2nd Cir. 1984), cert. denied, 470 U.S. 1084 (1985) (private attorneys representing wife in domestic dispute who obtained contempt order which led to imprisonment); Russell v. Millsap, 781 F.2d 381 (5th Cir. 1985), cert. denied, 479 U.S. 826 (1986); Hansen v. Ahlgrimm, 520 F.2d 768 (7th Cir. 1975); Taylor v. Diznoff, 633 F.Supp. 640 (W.D. Pa. 1986); Anderson v. Byars, 505 F.Supp. 32 (W.D.Okla. 1980); and

(4) Private counsel retained by governmental officers/bodies, see, e.g., Bates v. New York City Transit Authority, 721 F.Supp. 1577 (E.D.N.Y. 1989) (private attorney retained by the New York City Transit Authority and one of its police officers); Goetz v. Windsor Central School District, 593 F.Supp. 526 (N.D.N.Y. 1984) (12(b)(6) Motion granted private attorney who represented school district on ground that "the conduct of an attorney acting in his professional capacity while representing his client does not constitute action under color of state law for the purpose of § 1983". 593 F.Supp. at 528; Masel v. Industrial Commission of Illinois, 541 F.Supp. 342 (N.D.Ill.E.D. 1982) (12(b)(6) Motion granted private attorneys representing municipality).

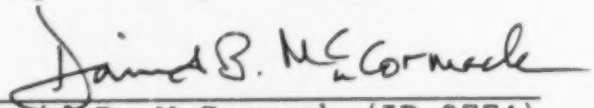
The rationale of these decisions is equally applicable to the present case and supports the lower courts' dismissal of the 42 U.S.C. §1983 claims against the law firm and the individual attorney Defendants. Their participation in the matters leading up to this lawsuit was limited solely to their appearance as privately retained counsel for the purpose of initiating certain legal proceedings on behalf of their client in South Carolina state court. Such action does not constitute action under color of state law for purposes of liability under 42 U.S.C. §1983.

CONCLUSION

The District Court for the District of South Carolina and the Court of Appeals for the Fourth Circuit correctly concluded that no basis existed in this case for

asserting liability under 42 U.S.C. §1983 against the Respondents Sinkler & Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen and Stephen E. Darling. Because the lower courts decided the issue correctly, these Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,



David B. McCormack (ID 2774)
Buist, Moore, Smythe & McGee, P.A.
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(803) 722-3400

COUNSEL FOR RESPONDENTS
SINKLER & BOYD, P.A., THOMAS C. HILDEBRAND, JR., V. CLAIR ALLEN, AND STEPHEN E. DARLING
(Counsel of Record)

Dated: March 29, 1994

(3)

No. 93-1472

Supreme Court, U.S.
FILED
APR 12 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS COUNTY OF CHARLESTON; J. ALTON CANNON, JR., SHERIFF OF CHARLESTON COUNTY; AND ROBERT MILLER, JR., UNDERSHERIFF OF CHARLESTON COUNTY

STEPHEN P. GROVES, ESQUIRE
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street, P. O. Box 993
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for Respondents, County of Charleston, J. Alton Cannon, Jr., and Robert Miller, Jr.
(Counsel of Record)

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

20 pp

QUESTIONS PRESENTED

The Respondents, the County of Charleston, the Honorable J. Alton Cannon, Jr., Sheriff of Charleston County, and the Honorable Robert Miller, Jr., Undersheriff of Charleston County, believe that the only questions presented, as they relate to them, are properly stated as follows:

I. Whether the lower courts were correct in holding that a political subdivision and its law enforcement officials were absolutely immune from liability under 42 *U.S.C.* § 1983 for their actions in this case since such actions were undertaken pursuant to a judicial order?

II. Whether the lower courts were correct in holding that the Respondent, County of Charleston, was not the moving force behind the Petitioner's alleged deprivation of constitutional rights?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS AND JUDGMENTS BELOW 2

JURISDICTION 3

STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 4

SUMMARY OF THE ARGUMENT 7

ARGUMENT 7

I. THE PETITIONER'S 42 *U.S.C.* § 1983 CLAIM AGAINST CHARLESTON COUNTY, CANNON, AND MILLER WAS BARRED BECAUSE THE ALLEGED WRONGFUL CONDUCT WAS TAKEN PURSUANT TO A JUDICIAL ORDER 1

II. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT CHARLESTON COUNTY ACTIVELY CAUSED DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS 12

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES

Bradley v. Fisher, 13 Wall. 335 (1872) 9

Briscoe v. Lahue, 460 U.S. 435 (1983) 11

Butz v. Economou, 438 U.S. 478 (1978) 11

C.M. Clark Ins. Agency, Inc. v. Maxwell, 479 F.2d 1223 (D.C. Cir. 1973) 8

Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231 (1959) 3

Green v. Maraio, 722 F.2d 1013 (2d Cir. 1983) 8, 10

Hanrahan v. Hampton, 446 U.S. 754 (1980) 11

Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed.2d 396 (1982) 10

Illinois v. Gates, 462 U.S. 213 (1983) 3

Imbler v. Pachtman, 424 U.S. 409 (1976) 8

James Island Public Service District v. Wilburt A. Seigel (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) *James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987) 5

Kauffman v. Moss, 420 F.2d 1270 (3rd Cir. 1970), *cert. denied*, 400 U.S. 84 (1970) 9

Lockhart v. Hoenstine, 411 F.2d 455 (3rd Cir. 1969), *cert. denied*, 396 U.S. 941 (1969) 9

McCray v. State of Maryland, 456 F.2d 1 (4th Cir. 1972) 9, 10, 11

TABLE OF AUTHORITIES – Continued

Page

Monell v. Department of Social Services, 436 U.S. 658 (1978) 12

Oklahoma City v. Tuttle, 471 U.S. 808 (1985) 12

Phillips v. Bureau of Prisons, 591 F.2d 966 (D.C. Cir. 1979) 8

Phillips v. Singletary, 350 F. Supp. 297 (D.S.C. 1972) 8

Pierson v. Ray, 386 U.S. 547 (1967) 9

Polk County v. Dodson, 454 U.S. 312 (1981) 12

Pure Oil Co. v. Suarez, 384 U.S. 202 (1966) 3

Seigel v. James Island Public Service District, et al., No. 92-1204 (4th Cir. Nov. 10, 1992) 2

United States ex rel. Smith v. Heil, 308 F. Supp. 1063 (E.D. Pa. 1970) 9

Waterman, S.S. Corp. v. United States, 381 U.S. 252 (1965) 3

Wetherington v. Phillips, 380 F. Supp. 426 (E.D.N.C. 1974) 8

STATUTES AND RULES

28 *U.S.C.* § 636(b)(1)(C) 6

28 *U.S.C.* § 1254(1) 3

28 *U.S.C.* § 1257 3

28 *U.S.C.* § 1257(3) 3

42 *U.S.C.* § 1983 ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

Rule 12(b), *FRCP* 6

Rule 12(b)(6), *FRCP* 4, 8, 10, 11

Sup. Ct. R. 10 3

BOOKS AND TREATISES

5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357 (1969) 8

No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS COUNTY OF CHARLESTON; J. ALTON CANNON, JR., SHERIFF OF CHARLESTON COUNTY; AND ROBERT MILLER, JR., UNDERSHERIFF OF CHARLESTON COUNTY

The Respondents, County of Charleston; J. Alton Cannon, Jr., Sheriff of Charleston County; and Robert

Miller, Jr., Undersheriff of Charleston County (collectively "Charleston County"), respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix

A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates*, 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231 (1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This *pro se* civil rights action came before the District Court on the joint Rule 12(b)(6), *FRCP*, Motion to Dismiss of the Respondents, Charleston County; the Honorable J. Alton Cannon, Jr., Sheriff of Charleston County; and the Honorable Robert Miller, Jr., Undersheriff of Charleston County. The Petitioner's action against Charleston County arose out of his incarceration at Lieber Correctional Institution ("Lieber") on January 11, 1989, pursuant to the Order of the Respondent, the Honorable William T. Howell ("Judge Howell"). Judge Howell issued an order on January 6, 1989, incarcerating the Petitioner for his willful failure to connect to a sewer line maintained by the Respondent, James Island Public Service District ("JIPSD"). The Petitioner claimed that the Order was "suspect, unfair, and violative of his civil rights." Charleston County's motion to dismiss was principally based

on the Petitioner's failure to state a claim upon which relief could be granted.

In 1984, the JIPSD instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[1] The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[2] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause why an Order should not be issued finding the Petitioner in contempt of Court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987, Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him sixty (60) days to hook up to the JIPSD's sewer system, in order to avoid incarceration. The Petitioner petitioned the South Carolina Supreme Court for a Writ of Supersedeas to Stay Judge Howell's contempt sentence. The Supreme Court denied the Petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by hooking up to the sewer system. On January 6, 1989, Judge Howell ordered the Petitioner

---

[1] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) (*"JIPSD v. Seigel"*).

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

to begin serving his contempt sentence on January 11, 1989. The Respondent, J. Alton Cannon, transported the Petitioner to Lieber and relinquished custody to the Respondent, South Carolina Department of Corrections ("SCDOC"). The Petitioner served only one (1) night at Lieber before he was released. Thereafter, on February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action was Charleston County, Cannon, and Miller. Those parties, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See*, 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District

Court's Order in an unpublished *per curiam* opinion rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the decisions below which dismissed his action against all of the Respondents, including Charleston County, Cannon, and Miller.

SUMMARY OF THE ARGUMENT

In all matters related to this case, these Respondents acted solely in their capacity as a municipal corporation and its agents, respectively. The doctrine of derivative judicial immunity barred the Petitioner's Complaint against these Respondents since the alleged wrongful acts were taken pursuant to a state court judicial order. In addition, as to Respondent Charleston County, the Petitioner's Complaint failed to identify any custom or policy of Charleston County which allegedly deprived the Petitioner of his rights. The lower courts were correct in dismissing the Petitioner's Complaint against these Respondents.

ARGUMENT

The Petitioner's action against these Respondents was based on his claim that Respondents Cannon and Miller and other deputies "entered his residence and [Respondent] Cannon transported him to Lieber Correctional Institute on January 11, 1989." The Petitioner was transported to Lieber pursuant to an Order issued by

Judge Howell on January 6, 1989, incarcerating the Petitioner for six (6) months for contempt of court. The Petitioner did not allege any other act or omission on the part of Charleston County, Cannon, or Miller. In addition, he did not seek any type of declaratory or injunctive relief against these Respondents.

I. THE PETITIONER'S 42 *U.S.C.* § 1983 CLAIM AGAINST CHARLESTON COUNTY, CANNON, AND MILLER WAS BARRED BECAUSE THE ALLEGED WRONGFUL CONDUCT WAS TAKEN PURSUANT TO A JUDICIAL ORDER.

Charleston County, Cannon, and Miller, are immune from liability for damages pursuant to 42 *U.S.C.* § 1983 because the allegedly wrongful action was taken pursuant to a judicial order.

A motion under Rule 12(b)(6), *FRCP*, must be granted by a District Court if an affirmative defense is apparent from the face of the Complaint.[3] The lower courts properly dismissed the Complaint since the allegations of the Complaint demonstrated that Charleston County, Cannon, and Miller were absolutely immune from the claim. *Imbler v. Pachtman*, 424 U.S. 409 (1976). *See, Phillips v. Singletary*, 350 F. Supp. 297 (D.S.C. 1972); *Wetherington v. Phillips*, 380 F. Supp. 426 (E.D.N.C. 1974). *See also, Green v. Maraio*, 722 F.2d 1013 (2d Cir. 1983); *C.M. Clark Ins.*

---

[3] Material which was submitted as a part of the Complaint, as well as items in the public record, could be and presumably was considered by the District Court. *Phillips v. Bureau of Prisons*, 591 F.2d 966 (D.C. Cir. 1979) (citing 5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357 (1969)).

Agency, Inc. v. Maxwell, 479 F.2d 1223 (D.C. Cir. 1973); *Kauffman v. Moss*, 420 F.2d 1270 (3rd Cir. 1970), *cert. denied*, 400 U.S. 84 (1970).

It was clear from the face of the Complaint that these Respondents were absolutely immune from the Petitioner's claim by virtue of the operation of derivative judicial immunity. These Respondents' actions were taken, undisputedly, pursuant to Judge Howell's January 6, 1989, order. This Court has pronounced and followed the doctrine of judicial immunity at common law for more than a century. *Bradley v. Fisher*, 13 Wall. 335 (1872). A judge is immune from civil liability for his judicial acts "however erroneous the act may have been and however injurious in its consequences it may have proved to the Plaintiff". *Id.*, 13 Wall. 335, 347. Nor can this "exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed." *Id.* The lower courts applied these long standing principles and properly dismissed the Petitioner's Complaint. This Court has also held that the common-law doctrine of judicial immunity applies to claims brought against judges pursuant to 42 *U.S.C.* § 1983. *Pierson v. Ray*, 386 U.S. 547 (1967). It is clear that this doctrine shielded Judge Howell from civil liability pursuant to 42 *U.S.C.* § 1983.

With this judicial immunity firmly established, the courts have *extended* absolute immunity to public officers who act in obedience to a judicial act or at the court's direction. *McCray v. State of Maryland*, 456 F.2d 1 (4th Cir. 1972); *Lockhart v. Hoenstine*, 411 F.2d 455 (3rd Cir. 1969), *cert. denied*, 396 U.S. 941 (1969); *United States ex rel. Smith v. Heil*, 308 F. Supp. 1063 (E.D. Pa. 1970). This defense is

most properly called a "derivative immunity." *Id.*, 308 F. Supp. 1063, 1066. Accord, *McCray*, 456 F.2d 1. The defense is based on the premise that it would be manifestly unfair to hold public officials liable for carrying out a judge's order when a judge is immune from liability. *Id.*, 456 F.2d 1, 5 n.11.

The Petitioner's Complaint acknowledged that Judge Howell ordered his incarceration at Lieber. The Order provided that "the Charleston County Sheriff's Department will pick up the [Petitioner] and transport him to Lieber Correctional Institute for service in their medical facility." Cannon and Miller had no alternative but to carry out the directives of Judge Howell's Order.

In *Green v. Maraio*, 772 F.2d 1013, the Second Circuit considered a 42 *U.S.C.* § 1983 claim against a trial judge and court reporter for allegedly altering a defendant's criminal trial transcript. In affirming the dismissal of the Complaint against the court reporter, the Second Circuit reasoned as follows:

> [I]n this case, there are several reasons why Maraio's defense of qualified immunity can support the grant of a Fed.R.Civ.P. 12(b)(6) motion for failure to state a claim upon which relief can be granted. First, Green's own complaint alleges that Maraio, in her capacity as a court reporter, acted pursuant to the judge's instructions. Thus, the complaint itself establishes the circumstances required as a predicate to a finding of qualified immunity, and consequently, there is no reason to require an answer, a hearing, or a trial. *See, Harlow v. Fitzgerald*, 457 U.S. 800, 807-08, 102 S. Ct. 2727, 2732-33, 73 L.Ed.2d 396 (1982). Once it was established that the basis for

Maraio's action was the judge's instructions, inquiry into other questions of motivation or good faith became unnecessary.

Further, allowing a [Rule] 12(b)(6)[, *FRCP*,] dismissal whenever the basis for finding qualified immunity applicable is established by the complaint itself 'permit[s] "[i]nsubstantial lawsuits [to] be quickly terminated." ' *Id.* at 814, . . . (quoting *Butz v. Economou*, 438 U.S. 478, 507 . . . (1978); *see also, Hanrahan v. Hampton*, 446 U.S. 754 . . . (1980) (noting that *Butz* 'caused the judiciary to exercise their authority under the rules of procedure in order to protect official defendants from groundless claims'). (Powell, J., concurring in part and dissenting in part); cf. *Briscoe v. Lahue*, 460 U.S. 435 . . . (1983) ('even the processing of a complaint that is dismissed before trial consumes a considerable amount of time and resources').

Last, we note that dismissal pursuant to [Rule] 12(b)(6)[, *FRCP*,] was proper as to Maraio '[s]ince judges are immune from suit for their decisions, [and therefore] it would be manifestly unfair to hold liable the ministerial officers who carry out the judicial will.' *McCray v. State of Maryland*, 456 F.2d 1, 5 n. 11 (4th Cir. 1972). Maraio is alleged by Green to have altered Green's transcript pursuant to Judge Ingrassia's explicit instructions. Clearly, it was the judge's decision to make the change, not the court reporter's. Under these circumstances, it would be manifestly unfair to allow Maraio to be subjected to liability when she was acting within the scope of the judge's instructions and was simply acting as an arm of the court in compliance with the exercise of his judicial authority.

Id., 772 F.2d 1013, 1019. There was no reason for the lower courts to hold differently below. The lower courts properly dismissed the Appellant's Complaint.

II. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT CHARLESTON COUNTY ACTIVELY CAUSED DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The Petitioner's Complaint was totally devoid of any facts sufficient to state a claim against Respondent Charleston County. In order to establish a governmental entity's liability under 42 *U.S.C.* § 1983, the Petitioner was required to establish that the entity is a "moving force behind the deprivation." *Polk County v. Dodson*, 454 U.S. 312 (1981) (quoting *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978)). Thus, the entity's "policy or custom" must have played a part in the violation of federal law. *Monell*, 436 U.S. 658, 694; *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985).

As this Court stated in *Monell*:

> [A] local government may not be sued under [42 *U.S.C.*] § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by it or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under [42 *U.S.C.*] § 1983.

Id., 436 U.S. 658, 694.

The Petitioner failed to make any allegation about any wrongful policy or custom of Charleston County. The only allegations that concerned Charleston County, at all, were actually allegations about the actions of Respondent Sheriff Cannon and Miller, and their acts undoubtedly were taken pursuant to a judge's order.

CONCLUSION

The Petitioner's Complaint against Respondents Charleston County, Cannon, and Miller was barred by the doctrine of derivative judicial immunity, since the alleged wrongful acts were taken pursuant to Judge Howell's judicial order. In addition, as to Respondent Charleston County, the Petitioner's Complaint was further defective because it failed to identify any custom or policy of Charleston County which allegedly deprived the Petitioner of his rights. The lower courts properly dismissed the Complaint. Consequently, these Respondents respectfully request that the

Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

STEPHEN P. GROVES
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street, P. O. Box 993
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for the Respondents County of Charleston; The Honorable J. Alton Cannon, Jr., Sheriff of Charleston County; and The Honorable Robert Miller, Jr., Undersheriff of Charleston County (Counsel of Record)

Dated: April 12, 1994

(4)

No. 93-1472

Supreme Court, U.S.
FILED
APR 13 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; AND P. DOUGLAS TAYLOR

STEPHEN P. GROVES, ESQUIRE
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street, P. O. Box 993
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for Respondents, South Carolina Department of Corrections, Parker Evatt, and P. Douglas Taylor (Counsel of Record)

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

25 pp

QUESTIONS PRESENTED

The Respondents, the South Carolina Department of Corrections, Parker Evatt, and P. Douglas Taylor, Warden (collectively "SCDOC"), believe that the only questions presented, as they relate to them, are properly stated as follows:

I. Whether the lower courts were correct in holding that a state agency and its employees and/or administrators were immune from liability under 42 *U.S.C.* § 1983 for their actions in this case?

II. Whether the lower courts were correct in holding that if the Petitioner intended to state a claim for declaratory/injunctive relief, that claim was barred as a matter of law because no case or controversy existed as the allegedly offending judicial order had been abated prior to when the Petitioner instituted this action?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS AND JUDGMENTS BELOW 2

JURISDICTION 3

STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 4

SUMMARY OF THE ARGUMENT 7

ARGUMENT 8

I. THE RESPONDENTS, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, PARKER EVATT, AND DOUGLAS P. TAYLOR, ARE STATE AGENCIES AND STATE OFFICIALS, RESPECTIVELY, AND, THEREFORE, CANNOT BE SUED PURSUANT TO 42 *U.S.C.* § 1983 8

II. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ACTIVELY CAUSED ANY DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS 11

III. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT EITHER COMMISSIONER EVATT OR WARDEN TAYLOR ACTIVELY CAUSED A DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS 12

TABLE OF CONTENTS – Continued

Page

IV. IF THE PETITIONER INTENDED TO STATE A CLAIM FOR DECLARATORY OR INJUNCTIVE RELIEF, SUCH CLAIM WAS BARRED BECAUSE NO CASE OR CONTROVERSY EXISTED SINCE JUDGE HOWELL HAD PREVIOUSLY ABATED THE ORDER OF INCARCERATION 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

Abele v. Markle, 452 F.2d 1121 (2nd Cir. 1971)..... 15

Adams v. Pate, 445 F.2d 105 (7th Cir. 1971) 13

Bailey v. Ohio State University, 487 F. Supp. 601 (S.D. Ohio 1980)..... 10

Bennett v. Gravelle, 323 F. Supp. 203 (D.Md.), *affirmed*, 451 F.2d 1011 (4th Cir. 1971)..... 13

Brandon v. Holt, 469 U.S. 464 (1985).....9, 10

Childs v. Pegelon, 321 F.2d 487 (4th Cir. 1963)..... 16

City of Los Angeles v. Lyons, 461 U.S. 95 (1984) 15

Ex Parte Young, 209 U.S. 123 (1908) 14

Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945)..... 9

Fowler v. Alexander, 478 F.2d 694 (4th Cir. 1973) 15

Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231 (1959)..... 3

Golden v. Zwickler, 394 U.S. 103 (1969)..... 15

Gourdine v. Ellis, 435 F. Supp. 882 (D.S.C. 1977) 10

Haskins v. United States, 292 F.2d 265 (4th Cir. 1961) 16

Henson v. Welch, 199 F.2d 367 (4th Cir. 1952) 16

Illinois v. Gates, 462 U.S. 213 (1983) 3

In Re Justices of Supreme Court of Puerto Rico, 695 F.2d 17 (1st Cir. 1982) 15

TABLE OF AUTHORITIES – Continued

Page

Jacobs v. College of William & Mary, 495 F. Supp. 183 (E.D. Va. 1980), *affirmed*, 662 F.2d 922 (4th Cir. 1981), *cert. denied*, 454 U.S. 1033 (1982) 10

James Island Public Service District v. Wilburt A. Seigel (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) 5

James Island Public Service District v. Wilburt A. Seigel (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987) 5

Jane Doe v. Seurynck, 473 F. Supp. 860 (D.S.C. 1978) 13

Jennings v. Davis, 476 F.2d 127 (8th Cir. 1973) 13

Kompara v. Board of Regents, 548 F. Supp. 537 (M.D. Tenn. 1982) 11

Mitchell v. Hendricks, 431 F. Supp. 1215 (E.D. Pa. 1977) 13

Monell v. Department of Social Services, 436 U.S. 658 (1978) 8, 9, 11

Monroe v. Pape, 365 U.S. 167 (1961) 13

Moremo v. University of Maryland, 645 F.2d 217 (4th Cir. 1981), *affirmed*, 458 U.S. 1 (1982) 9

Moreno v. University of Maryland, 420 F. Supp. 541 (D. Md. 1976), *affirmed without opinion*, 556 F.2d 573 (4th Cir. 1977) 11

O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987) 16

Oklahoma City v. Tuttle, 471 U.S. 808 (1985) 11

Papasan v. Allain, 478 U.S. 265 (1986) 13

Pennhurst State School & Hospital v. Holderman, 465 U.S. 89 (1984) 8

TABLE OF AUTHORITIES – Continued

Page

Polk County v. Dodson, 454 U.S. 312 (1981) 11

Pure Oil Co. v. Suarez, 384 U.S. 202 (1966) 3

Quern v. Jordan, 440 U.S. 332 (1979) 9, 10

Rizzo v. Goode, 423 U.S. 362 (1976) 13, 15

Seigel v. James Island Public Service District, et al., No. 92-1204 (4th Cir. Nov. 10, 1992) 2

Talliafero v. State Council of Higher Education, 372 F. Supp. 1378 (E.D. Va. 1974) 11

Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977) 13

Waterman, S.S. Corp. v. United States, 381 U.S. 252 (1965) 3

Welch v. Texas Dept. of Highway & Public Transportation, 483 U.S. 468 (1987) 8

Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989) 9, 10

STATUTES AND RULES

S.C. Code Ann. § 1-30-10 (Supp. 1993) 10

S.C. Code Ann. § 24-1-20 (1989) 10

S.C. Code Ann. § 24-1-30 (1989) 10

S.C. Code Ann. § 24-1-40 (Supp. 1993) 10

S.C. Code Ann. § 24-1-100 (1989) 10

S.C. Code Ann. § 24-1-110 (1989) 10

S.C. Code Ann. § 24-3-10 (1989) 12

TABLE OF AUTHORITIES – Continued

Page

28 *U.S.C.* § 636(b)(1)(C) 6

28 *U.S.C.* § 1254(1) 3

28 *U.S.C.* § 1257 3

28 *U.S.C.* § 1257(3) 3

42 *U.S.C.* § 1983 ..... *passim*

Rule 12(b), *FRCP* 6

Rule 12(b)(6), *FRCP* 4

Sup. Ct. R. 10 3

U.S. Const. art. III, § 2 14

No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; AND P. DOUGLAS TAYLOR

The Respondents, South Carolina Department of Corrections; Parker Evatt, Commissioner, South Carolina Department of Corrections; and P. Douglas Taylor, Warden, Lieber Correctional Institution, respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates*, 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231 (1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court

should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This *pro se* civil rights action came before the District Court on the collective Rule 12(b)(6), *FRCP*, Motion to Dismiss of the Respondents, South Carolina Department of Corrections, Parker Evatt, and P. Douglas Taylor. The Petitioner's action against the SCDOC arose out of his incarceration at Lieber Correctional Institution ("Lieber") on January 11, 1989, pursuant to the Order of the Respondent, the Honorable William T. Howell ("Judge Howell"). The SCDOC's motion to dismiss was principally based on the Petitioner's failure to state a claim upon which relief could be granted.

In 1984, the Respondent, James Island Public Service District ("JIPSD"), instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[1]

The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[2] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause Why an Order should not be issued finding the Petitioner in contempt of court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987, Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him a sixty (60) day grace period to hook up to the JIPSD's sewer system to avoid incarceration. The Petitioner filed a petition with the South Carolina Supreme Court for a Writ of Supersedeas to Stay Judge Howell's contempt sentence. The Supreme Court denied the Petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by hooking up to the sewer system. On January 6, 1989, Judge Howell ordered the Petitioner

---

[1] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) ("*JIPSD v. Seigel*").

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

to begin serving his contempt sentence on January 11, 1989. The Respondent, J. Alton Cannon, Sheriff of Charleston County, transported the Petitioner to Lieber and relinquished custody to the SCDOC. The Petitioner served only one (1) night at Lieber before he was released. He was in the SCDOC's custody for only that short time. Thereafter, on February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action were the SCDOC, Evatt, and Taylor. They, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the Respondents' motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See* 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the

Fourth Circuit. The Court of Appeals affirmed the District Court's Order in an unpublished *per curiam* opinion rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the decisions below which dismissed his action against all of the Respondents, including the SCDOC, Evatt, and Taylor.

SUMMARY OF THE ARGUMENT

These Respondents are a state agency and its officials which are immune from liability under 42 *U.S.C.* § 1983. The lower courts properly found that the Petitioner's Complaint failed to allege that any custom or policy by the SCDOC which deprived the Petitioner of his constitutional rights. In addition, there was no allegation of any act or omission by Respondents Evatt or Taylor sufficient to state a 42 *U.S.C.* § 1983 claim. Finally, even if the Petitioner had articulated a request for declaratory or equitable relief, those issues were moot because Judge Howell had abated the order of incarceration and no case nor controversy existed for adjudication.

ARGUMENT

I. THE RESPONDENTS, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, PARKER EVATT, AND DOUGLAS P. TAYLOR, ARE STATE AGENCIES AND STATE OFFICIALS, RESPECTIVELY, AND, THEREFORE, CANNOT BE SUED PURSUANT TO 42 *U.S.C.* § 1983.

It is undisputed that the SCDOC is a State agency and Evatt and Taylor, its officers, are State officials. The SCDOC and its officials were specifically excluded from suit pursuant to 42 *U.S.C.* § 1983. The claims were barred on two separate and distinct grounds: (1) the Eleventh Amendment bars suits against state agencies or their officials; and (2) state agencies and state officials acting in their official capacities are not "persons" within the scope of 42 *U.S.C.* § 1983.

Section 1 of the Civil Rights Act of 1871, 42 *U.S.C.* § 1983, was passed pursuant to § 5 of the Fourteenth Amendment. It was originally part of a bill designed to curtail Ku Klux Klan violence in the South. *See, Monell v. Department of Social Services*, 436 U.S. 658 (1978). The statute provides a federal cause of action to plaintiffs who have been deprived of their constitutional right by "any person" under color of state law. *Id.*

The Eleventh Amendment bars suits against a state or its agencies, unless the state has waived its immunity, *Welch v. Texas Dept. of Highway & Public Transportation*, 483 U.S. 468 (1987) (plurality opinion), or unless Congress, pursuant to § 5 of the Fourteenth Amendment, has overridden that immunity. *See also, Pennhurst State School &*

Hospital v. Holderman, 465 U.S. 89 (1984); *Moremo v. University of Maryland*, 645 F.2d 217 (4th Cir. 1981), *affirmed*, 458 U.S. 1 (1982).

In 1979, this Court held that Congress, in passing 42 *U.S.C.* § 1983, had no intention of disturbing a state's Eleventh Amendment immunity. *Quern v. Jordan*, 440 U.S. 332 (1979). The Court reasoned that a claim which might impose a liability to be paid from public funds in a state's registry was barred by the Eleventh Amendment. Reviewing the legislative history behind the Civil Rights Act of 1871, the Court held that there was no logic warranting "the conclusion that Congress intended, by the general language of the Act, to overturn the constitutionally guaranteed immunity of the states." *Id.*, 440 U.S. 332, 341.

In 1989, this Court, in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), specifically ruled that neither a state nor its officials acting in their official capacities are "persons" under 42 *U.S.C.* § 1983. *Will*, 491 U.S. 58, 71. The *Will* Court also held that, while state officials literally are "persons" in a literal case, a suit against a state official in his or her official capacity is not a suit against the official but, rather, is a suit against the official's office. *Id.*, 491 U.S. 58, 71.[3] A lawsuit against a governmental

---

[3] *See, Brandon v. Holt*, 469 U.S. 464, 471 (1985). Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Monell*, 436 U.S. 658, 690 n. 55; *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945) ("When the action is, in essence, one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to

official, acting in his or her official capacity, is, in all respects other than name, to be treated as a suit against the entity. *Brandon*, 469 U.S. 464, 471-472.

It was undisputed that the SCDOC was created pursuant to *S.C. Code Ann.* § 24-1-30 (1989). That statute provides that the SCDOC is an administrative agency of the government of the State of South Carolina. *Id.* The statute further provides that the SCDOC's primary function is to implement and carry out the policy of the State with respect to its prison system. *Id. See also, S.C. Code Ann.* § 24-1-20 (1989). It is also undisputed that Respondents Evatt and Taylor, as the Commissioner[4] and Warden, respectively, were State officials. *See S.C. Code Ann.* §§ 24-1-100, 110 (1989). Therefore, while acting in their official capacities, they were in effect, alter egos of the State of South Carolina. The Petitioner's 42 *U.S.C.* § 1983 claims against the SCDOC were barred.[5] *Will*, 491 U.S. 58, 71.

---

invoke its sovereign immunity from suit, even though individual officials are nominal defendants").

[4] In 1993 the South Carolina Legislature partially reorganized South Carolina state government. *See, S.C. Code Ann.* § 1-30-10 *et seq.* (Supp. 1993). The Office of the Commissioner of the SCDOC was abolished and the Office of the Director of the SCDOC was created. *S.C. Code Ann.* § 24-1-40 (Supp. 1993).

[5] *See generally, Gourdine v. Ellis*, 435 F. Supp. 882 (D.S.C. 1977). *Jacobs v. College of William & Mary*, 495 F. Supp. 183 (E.D. Va. 1980), *affirmed*, 662 F.2d 922 (4th Cir. 1981), *cert. denied*, 454 U.S. 1033 (1982) (the Court held in a sex discrimination action against a state university that it need not reach the question of whether the university, as a state agency, was a "person" within the meaning of 42 *U.S.C.* § 1983, but noted that it appeared that this Court's decision in *Quern* effectively closed application of 42 *U.S.C.* § 1983 to the states and their agencies). *Bailey v. Ohio*

II. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ACTIVELY CAUSED ANY DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The Petitioner's Complaint was devoid of any facts sufficient to state a claim against the SCDOC. In order to establish a governmental entity's liability under 42 *U.S.C.* § 1983, the Petitioner was required to establish that the entity at issue is a "moving force behind the deprivation." *Polk County v. Dodson*, 454 U.S. 312, 326 (1981) (quoting *Monell*, 436 U.S. 658, 694). Consequently, the entity's "policy or custom" must have played a part in the violation of federal law. *Oklahoma City v. Tuttle*, 471 U.S. 808, 817-818 (1985).

As this Court stated in *Monell*:

> [A] local government may not be sued under [42 *U.S.C.*] § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by it or by those whose edicts or

---

State University, 487 F. Supp. 601 (S.D. Ohio 1980) (holding that a state university in Ohio was not a "person" subject to suit under 42 *U.S.C.* § 1983); *Moreno v. University of Maryland*, 420 F. Supp. 541 (D. Md. 1976), *affirmed without opinion*, 556 F.2d 573 (4th Cir. 1977); *Talliafero v. State Council of Higher Education*, 372 F. Supp. 1378 (E.D. Va. 1974); *Kompara v. Board of Regents*, 548 F. Supp. 537 (M.D. Tenn. 1982) (the Court reasoned that although Congress could have included states within the definition of "person" in § 1983, if it had so chosen, such an interpretation of the statute was nevertheless precluded by this Court's decision in *Quern*).

> acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under [42 *U.S.C.*] § 1983.

Id., 436 U.S. 658, 694.

The Petitioner failed to allege improper policy or custom maintained by the SCDOC. The only allegations that concerned SCDOC, at all, were actually allegations about unnamed jail officials who transported the Petitioner from Lieber back to the Charleston County Jail and into the custody of the Charleston County Sheriff's Department. The lower courts properly dismissed the Petitioner's Complaint since it patently failed to state a claim against the SCDOC.

III. THE PETITIONER'S COMPLAINT FAILED TO STATE ANY FACTS TO SUPPORT A CLAIM THAT EITHER COMMISSIONER EVATT OR WARDEN TAYLOR ACTIVELY CAUSED A DEPRIVATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS.

The only facts in the Petitioner's Complaint alleged against Respondents Evatt and Taylor were found in Paragraph 5 which provided:

> Defendant [SCDOC] operates under [*S.C. Code Ann.*] § 24-3-10, etc. [(1989)], where it is stated that the Board of Corrections shall designate place of confinement. The [SCDOC] is under Commissioner Parker Evatt who is in charge of the Lieber Correctional Institute, which is under the supervision of Warden P. Douglas Taylor where [Petitioner] was wrongfully incarcerated in a maximum security cell on January 11, 1989.

Id. The Complaint was otherwise devoid of any allegations concerning either Respondent Evatt or Taylor. There were no allegations that either official caused the events leading to the Petitioner's alleged constitutional deprivation of rights. Personal action is required to hold a defendant liable under 42 *U.S.C.* § 1983. *Monroe v. Pape*, 365 U.S. 167 (1961).

Federal courts have repeatedly held, in essence, that:

> It is necessary to establish personal knowledge or involvement, the personal ordering of a subordinate to do acts, an actual knowledge of the acts of subordinates, and acquiescence therein if liability of a superior in a civil rights action is to be found.

Jane Doe v. Seurynck, 473 F. Supp. 860, 863 (D.S.C. 1978) (citing *Mitchell v. Hendricks*, 431 F. Supp. 1215 (E.D. Pa. 1977)). Moreover, the Fourth Circuit has held, in *Vinnedge v. Gibbs*, 550 F.2d 926 (4th Cir. 1977):

> Liability will only lie [under 42 *USC* § 1983] where it is affirmatively shown that the official charged acted personally in the deprivation of the Appellant's rights. The doctrine of *respondeat superior* has no application under this action.

Id. (citing *Bennett v. Gravelle*, 323 F. Supp. 203, 214 (D.Md.), *affirmed*, 451 F.2d 1011 (4th Cir. 1971)). *See also*, *Rizzo v. Goode*, 423 U.S. 362 (1976); accord, *Jennings v. Davis*, 476 F.2d 127 (8th Cir. 1973); *Adams v. Pate*, 445 F.2d 105 (7th Cir. 1971).

The Petitioner's Complaint contained no allegations that either Respondent Evatt or Taylor had personal involvement in the alleged deprivation of his rights.

Moreover, there was no basis in the Complaint for such an inference. The Petitioner failed to state a claim upon which relief can be granted pursuant to 42 *U.S.C.* § 1983 and the lower courts properly dismissed his action.

IV. IF THE PETITIONER INTENDED TO STATE A CLAIM FOR DECLARATORY OR INJUNCTIVE RELIEF, SUCH CLAIM WAS BARRED BECAUSE NO CASE OR CONTROVERSY EXISTED SINCE JUDGE HOWELL HAD PREVIOUSLY ABATED THE ORDER OF INCARCERATION.

Eleventh Amendment immunity does not necessarily extend to a 42 *U.S.C.* § 1983 action for declaratory/injunctive relief. *Papasan v. Allain*, 478 U.S. 265 (1986); *Ex Parte Young*, 209 U.S. 123 (1908). Given the liberality with which the Petitioner's *pro se* Complaint must be reviewed by the lower courts on a motion to dismiss, the Complaint could have arguably been broadly interpreted to request declaratory/injunctive relief.

Even if the Petitioner's Complaint could be interpreted to have sought declaratory/injunctive relief the Petitioner, nonetheless, lacked standing to present the request, and the lower courts lacked jurisdiction to hear the Petitioner's claim. Standing is a jurisdictional issue, as opposed to a procedural one. The judicial power of the federal courts is constitutionally limited to the adjudication of "cases" or "controversies." *U.S. Const.* art. III, § 2. The existence of a case or controversy

> 'depends upon whether the person seeking relief has alleged a sufficient personal stake in the outcome to assure that the Court will be

> called upon to resolve real issues between genuine adversaries rather than merely to give advisory opinions with respect to abstract or theoretical questions.'

Fowler v. Alexander, 478 F.2d 694, 696 (4th Cir. 1973) (quoting *Abele v. Markle*, 452 F.2d 1121, 1124 (2nd Cir. 1971)).

As the Petitioner's Complaint plainly indicated, the Petitioner was no longer in jail nor was the Order of Incarceration still in effect at the time he filed this action. The Petitioner was not entitled to declaratory or injunctive relief. He was unable to show that he was in real, immediate danger of sustaining some direct injury as a result of the challenged official conduct. Abstract injury is not enough. The injury, or threat of injury, must be "real and immediate", not "conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95 (1984); *Rizzo*, 423 U.S. 362 561; *Golden v. Zwickler*, 394 U.S. 103 (1969); *In Re Justices of Supreme Court of Puerto Rico*, 695 F.2d 17 (1st Cir. 1982).

It was unclear why or how a specific procedure, or the lack of a procedure, to specify the location of incarceration could have been harmful to the Petitioner. Since the allegedly offending order had been abated, the Petitioner did not face any real or immediate threat of incarceration. The Petitioner was, likewise, under no present threat of transportation to a place of incarceration. The likelihood that he would be incarcerated in the future was remote and speculative in the extreme. Even if litigation was to be initiated again between the Petitioner and the JIPSD, there was no reason to assume that the Petitioner would be found in contempt of court. There was also no reason to assume that if he was found in contempt of court, there

would be the sentence of incarceration as opposed to a monetary fine.

Furthermore, it is a well established rule that unless exceptional circumstances exist, internal matters in state penitentiaries are the sole concern of the states, and federal courts should not inquire concerning them. *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); *Childs v. Pegelon*, 321 F.2d 487 (4th Cir. 1963); *Haskins v. United States*, 292 F.2d 265 (4th Cir. 1961); *Henson v. Welch*, 199 F.2d 367 (4th Cir. 1952). The Petitioner did not present any exceptional circumstances which would be sufficient to justify judicial intervention in this case.

CONCLUSION

The Respondents, South Carolina Department of Corrections, Commissioner Evatt, and Warden Taylor, as a state agency and state officials, respectively, were immune from liability under 42 *U.S.C.* § 1983. Furthermore, the lower courts properly found that the Petitioner's Complaint failed to allege that any custom or policy by the SCDOC which deprived the Petitioner of his constitutional rights. In addition, the Petitioner did not allege any act or omission by Respondents Evatt or Taylor sufficient to state a 42 *U.S.C.* § 1983 claim. Finally, even if the Petitioner had articulated a request for declaratory or equitable relief, those issues were moot because Judge Howell had abated the order of incarceration and no case nor controversy existed for adjudication. The lower courts properly dismissed the Petitioner's Complaint. Consequently, these Respondents respectfully request

that the Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

STEPHEN P. GROVES
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street (P. O. Box 993)
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for the Respondents South Carolina Department of Corrections; Parker Evatt; and P. Douglas Taylor (Counsel of Record)

Dated: April 13, 1994

(5)

Supreme Court, U.S.
FILED
APR 12 1994
OFFICE OF THE CLERK

No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS, JAMES ISLAND PUBLIC SERVICE DISTRICT; ITS COMMISSIONERS; ROBERT E. WELCH; AND EDWIN B. QUINN

STEPHEN P. GROVES, ESQUIRE
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street, P. O. Box 993
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for Respondents, James Island Public Service District, Its Commissioners, Robert E. Welch, and Edwin B. Quinn (Counsel of Record)

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

The Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; and Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District, believe that the only questions presented, as they relate to them, are properly stated as follows:

I. Whether the lower courts were correct in holding that the Petitioner's Complaint failed to allege facts indicating that these Respondents caused his incarceration thereby eliminating any liability under 42 *U.S.C.* § 1983?

II. Whether the lower courts were correct in holding that the Petitioner's claims that certain legislative acts and statutes were unconstitutional were barred by the doctrine of *res judicata*?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS AND JUDGMENTS BELOW 2

JURISDICTION 3

STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 4

SUMMARY OF THE ARGUMENT 7

ARGUMENT 8

History Of The Prior Litigation 9

A. *PSD v. Seigel* 9

B. *Seigel v. PSD* 11

I. THE PETITIONER'S COMPLAINT WAS DEVOID OF ANY FACTS SUFFICIENT TO STATE A CAUSE OF ACTION UNDER 42 *U.S.C.* § 1983 AGAINST THE JIPSD, IT COMMISSIONERS, WELCH, OR QUINN 12

II. THE PETITIONER'S CLAIMS THAT THE JIPSD WASTEWATER RESOLUTION AND *S.C. CODE ANN.* § 6-11-1250 WERE UNCONSTITUTIONAL WAS BARRED BY THE DOCTRINE OF *RES JUDICATA* 14

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Allen v. McCurry, 449 U.S. 90 (1980) 15

Amfac Mfg. Corp. v. Arizona Mall of Tempe, 583 F.2d 426 (9th Cir. 1978) 14

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971) 15

Ellis v. Cates, 178 F.2d 791 (4th Cir. 1952) 14

Fletcher v. Bryan, 266 F.2d 72 (4th Cir. 1959) 14

Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231 (1959) 3

Illinois v. Gates, 462 U.S. 213 (1983) 3

James Island Public Service District v. Wilburt A. Seigel (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) 5

James Island Public Service District v. Wilburt A. Seigel (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987) 5, 9

Mann v. Peoples First Nat. Bank & Trust Co., 209 F.2d 570 (4th Cir. 1954) 14

Phillips v. Bureau of Prisons, 591 F.2d 966 (D.C.Cir. 1979) 14

Pure Oil Co. v. Suarez, 384 U.S. 202 (1966) 3

Quiller v. Barclays American Credit, Inc., 727 F.2d 1067 (11th Cir. 1984) 14

Seigel v. James Island Public Service District, et al., No. 92-1204 (4th Cir. Nov. 10, 1992) 2, 11, 15, 16

TABLE OF AUTHORITIES – Continued

Page

Waterman, S.S. Corp. v. United States, 381 U.S. 252 (1965) 3

Wilburt A. Seigel v. James Island Public Service District (Civil Action No. 2:86-775-8, United States District Court for the District of South Carolina) 12

Wilburt A. Seigel v. James Island Public Service District (Civil Action No. 86-CP-10-802, Charleston County Court of Common Pleas) 11

STATUTES AND RULES

S.C. Code Ann. § 1260 (1976) 16

S.C. Code Ann. § 6-11-1250 (1976) ..... *passim*

S.C. Code Ann. § 6-11-1251 (1976) 12, 16

28 *U.S.C.* § 636(b)(1)(C) 7

28 *U.S.C.* § 1254(1) 3

28 *U.S.C.* § 1257 3

28 *U.S.C.* § 1257(3) 3

42 *U.S.C.* § 1983 ..... *passim*

Rule 12(b), *FRCP* 6, 14

Rule 12(b)(6), *FRCP* 8, 14

Sup. Ct. R. 10 3

BOOKS AND TREATISES

1961 *Act No.* 498 ..... 11, 12, 15, 16

1965 *Act No.* 397 16

No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON,JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS, JAMES ISLAND PUBLIC SERVICE DISTRICT; ITS COMMISSIONERS; ROBERT E. WELCH; AND EDWIN B. QUINN

The Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; and Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District (collectively "JIPSD"), respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991.

That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates*, 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231

(1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This is a *pro se* civil rights action by the Petitioner against, *inter alia*, the Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; and Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District. The Petitioner's action against the JIPSD arose

out of his incarceration at Lieber Correctional Institution ("Lieber") on January 11, 1989, pursuant to the Order of the Respondent, the Honorable William T. Howell ("Judge Howell"). Judge Howell issued an order on January 6, 1989, incarcerating the Petitioner for his willful failure to connect to a sewer line maintained by the JIPSD. The Petitioner claimed that the Order was "suspect, unfair, and violative of his civil rights." The JIPSD's motion to dismiss was principally based on the Petitioner's failure to state a claim upon which relief could be granted.

In 1984, the JIPSD instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[1] The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[2] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause Why an Order should not be issued finding the Petitioner in contempt of Court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987, Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him sixty (60)

---

[1] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) (*"JIPSD v. Seigel"*).

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

days to hook up to the JIPSD's sewer system, in order to avoid incarceration. The Petitioner petitioned the South Carolina Supreme Court for a Writ of Supersedeas to stay Judge Howell's contempt sentence. The Supreme Court denied that Petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by hooking up to the JIPSD sewer system. On January 6, 1989, Judge Howell ordered the Petitioner to begin serving his contempt sentence on January 11, 1989. The Respondent, J. Alton Cannon, transported the Petitioner to Lieber and relinquished custody to the Respondent, South Carolina Department of Corrections. The Petitioner served only one (1) night at Lieber before he was released. Thereafter, on February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action were the JIPSD, its Commissioners, Welch, and Quinn. Those parties, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the

Respondents' motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See*, 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District Court's Order in an unpublished *per curiam* opinion rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the decisions below which dismissed his action against all of the Respondents, including the JIPSD, its Commissioners, Welch, and Quinn.

SUMMARY OF THE ARGUMENT

The Petitioner's claim failed to state any facts to support a claim that any act or omission of the JIPSD, it Commissioners, Welch, or Quinn caused his incarceration. In addition, the Petitioner's claim that *S.C. Code Ann.* § 6-11-1250 and the JIPSD Wastewater Resolution were unconstitutional was by the doctrine of *res judicata*. The lower courts properly dismissed the Petitioner's Complaint.

ARGUMENT

This action came before the District Court on a Rule 12(b)(6), *FRCP*, Motion to Dismiss the Petitioner's Complaint brought by Respondents JIPSD, its Commissioners, Welch, and Quinn. The Petitioner alleged that his constitutional rights were violated by JIPSD's institution and pursuit of a lawsuit pursuant to *S.C. Code Ann.* § 6-11-1250 (1976) seeking an injunction against the Petitioner for his voluntary failure to connect to the JIPSD's municipal sewer line. The Petitioner asserted that *S.C. Code Ann.* § 6-11-1250 was unconstitutional because it permitted "punishment" for acts committed prior to the statute's enactment. More specifically, the Petitioner claimed that he had a "proper septic system" at the time of the promulgation of the JIPSD's Wastewater Collection System and Rate Resolution and, therefore, the JIPSD wrongfully prosecuted and wrongfully caused him to be incarcerated for failing to connect to an "improper crushed sewer line". The JIPSD's Motion to Dismiss was based on the ground that the Petitioner's claim failed to state a claim upon which relief could have been granted because the claim was barred by the application of the doctrine of *res judicata.*

The JIPSD's Motion to Dismiss was originally heard by the United States Magistrate Judge, on March 21, 1991. The Magistrate Judge issued a written Report and Recommendation on August 5, 1991 recommending that the Petitioner's Complaint be dismissed. The Petitioner excepted to the Report. By Order, dated and filed January 10, 1992, the District Court adopted the Report and Recommendation and directed that the Petitioner's Complaint be dismissed.

The Petitioner then timely appealed the District Court's Order to the Fourth Circuit. The Court of Appeals affirmed the District Court's Order in an unpublished *per curiam* opinion. The Fourth Circuit denied the Petitioner's Petition for Rehearing.

History Of The Prior Litigation

A. *PSD v. Seigel*

The JIPSD first commenced litigation against the Petitioner on or about November 28, 1984, seeking a mandatory injunction to compel the Petitioner to connect to the JIPSD's sewer system.[3] A trial was held on the JIPDS's request for a Mandatory Injunction. On March 3, 1986, the Honorable Edward B. Cottingham ("Judge Cottingham"), issued his Order requiring the Petitioner to tie into JIPSD's sewer system at his own expense within thirty (30) days of his receipt of a copy of the Order. Judge Cottingham heard, but rejected, the Petitioner's argument that the sewer system was unhealthy and that it was technically not feasible for the Petitioner to tie into the system.

The Petitioner appealed Judge Cottingham's Order. The South Carolina Court of Appeals affirmed that decision.[4] Judgment was then entered against the Petitioner on March 25, 1987. By Order dated October 17, 1988, Judge Howell issued a Rule to Show Cause and Order requiring the Petitioner to appear before the Court to

---

[3] *See*, Footnote 1, *supra*.

[4] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

show cause why he should not be held in contempt for failing to comply with Judge Cottingham's Order as affirmed by the South Carolina Court of Appeals.

Judge Howell held a hearing on the Rule to Show Cause on October 26, 1988. On November 1, 1988, Judge Howell issued an Order denying the Petitioner's Motion to Vacate Judge Cottingham's Order and denying Petitioner's Motion to Quash the Rule to Show Cause. Furthermore, Judge Howell found the Petitioner in contempt for his willful failure to tie into the sewer system and sentenced him to six (6) months in jail. Judge Howell, nevertheless, gave the Petitioner sixty (60) days from the date of the hearing to comply with the contempt order by properly tying into the JIPSD sewer system. The Petitioner then petitioned the South Carolina Supreme Court for a Writ of Supersedeas to stay Judge Howell's contempt sentence. The Supreme Court denied the petition on December 16, 1988.

On January 6, 1989, Judge Howell modified his earlier Order and directed the Petitioner to begin serving his six (6) month term on January 11, 1989. The Petitioner served only one (1) night at Lieber. On January 12, 1989, Judge Howell stayed the Petitioner's sentence until another hearing could be held on February 16, 1989. The Petitioner, now through counsel, requested that Judge Howell enter a new Contempt Order abating the incarceration order because of the Petitioner's poor health. Judge Howell revised his Order and substituted a monetary fine in lieu of incarceration.

B. ***Seigel v. PSD***

In February 1986, the Petitioner instituted a lawsuit against the JIPSD arising out of events dating back to 1982.[5] In 1982, a Charleston County magistrate issued an arrest bench warrant for the Petitioner, pursuant to an affidavit filed by JIPSD representatives, alleging the Petitioner had violated the JIPSD Wastewater Resolution by failing to connect to the sewer system. The warrant, asserting a misdemeanor violation, was served on the Petitioner and he was arrested. At trial the Petitioner was found guilty of failing to tie into the sewer system. He appealed the decision to the Circuit Court which reversed his conviction. The Circuit Court held that the penalty provisions of 1961 *Act No.* 498 were unconstitutional because the act had been passed, as a special law, but had later been displaced by a general law; *S.C. Code Ann.* § 6-11-1250. That section provides for a mandatory injunction requiring a citizen to connect. *Id.* No appeal was taken from that decision.

The Petitioner then filed his Complaint in *Seigel v. JIPSD* alleging abuse of process, malicious prosecution, false arrest, and violations of 42 *U.S.C.* § 1983. The underlying theory of those claims was that the JIPSD acted improperly in pursuing the Magistrate's Court misdemeanor complaint against the Petitioner for his failure to connect to the sewer system. He alleged that the JIPSD allegedly knew or should have known that the JIPSD's

---

[5] *See, Wilburt A. Seigel v. James Island Public Service District* (Civil Action No. 86-CP-10-802, Charleston County Court of Common Pleas) (*"Seigel v. JIPSD"*).

enabling act, 1961 *Act No.* 498, § 9 (penalties section), was unconstitutional.

The JIPSD removed the case to federal court[6] and moved to dismiss the 42 *U.S.C.* § 1983 claim, as well as, the state claims. The District Court granted the JIPSD's motion to dismiss the civil rights claims, holding that 1961 *Act No.* 498, and *S.C. Code Ann.* §§ 6-11-1251, 1250, and 1260 (1976) were constitutional. The Petitioner did not appeal. The remaining state claims were remanded to state court. Judge Howell later granted summary judgment to the JIPSD on December 29, 1988.

I. THE PETITIONER'S COMPLAINT WAS DEVOID OF ANY FACTS SUFFICIENT TO STATE A CAUSE OF ACTION UNDER 42 *U.S.C.* § 1983 AGAINST THE JIPSD, IT COMMISSIONERS, WELCH, OR QUINN.

The alleged basis for the Petitioner's 42 *U.S.C.* § 1983 damages claim against the JIPSD, its Commissioners, Welch, and Quinn was set forth in Paragraph 9 of the Petitioner's Complaint. He alleged that:

> All Defendants independently, or in concert, did cause [the Petitioner] to be wrongfully incarcerated, processed, mugged, fingerprinted, hurtful physical examination, held in maximum security, transported by State Prison guards to places

---

[6] *See, Wilburt A. Seigel v. James Island Public Service District* (Civil Action No. 2:86-775-8, United States District Court for the District of South Carolina).

> unknown, causing infliction of mental and emotional distress, real and extreme mental disturbance, humiliation, publicity, cruel and unusual punishment, all intentional interference with the person of [the Petitioner].

Id. The Petitioner contended the JIPSD and its officials, among others, "caused" him to be incarcerated. His own allegations and Judge Howell's Order, however, proved otherwise. Judge Howell found the Petitioner in contempt of court for his *willful* failure to tie into the JIPSD sewer system. Judge Howell ordered his incarceration, not the JIPSD. The JIPSD did not even request an Order of Incarceration, but only such sanctions as the court deemed necessary to insure compliance with outstanding Orders and Judgment. Judge Howell, after allowing the Petitioner sixty (60) days from the date of the hearing to properly tie into the sewer system, determined, in his discretion, that incarceration was the most appropriate sanction.

It is evident from the face of the Complaint that the JIPSD did not cause the Petitioner to be transported to or incarcerated in Lieber. As a matter of law the JIPSD lacked authority to cause the Petitioner to be incarcerated. The Petitioner's Complaint failed to state any facts to the contrary.

II. THE PETITIONER'S CLAIMS THAT THE JIPSD WASTEWATER RESOLUTION AND *S.C. CODE ANN.* § 6-11-1250 WERE UNCONSTITUTIONAL WAS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

A motion pursuant to Rule 12(b)(6), *FRCP*, should be granted if an affirmative defense is apparent from the face of the Complaint. The allegations in the Petitioner's Complaint before the District Court made reference to prior litigation between the parties.[7] Dismissal of the Complaint was proper since the affirmative defense of *res judicata* was apparent from the face of the Complaint. *Res judicata* is an affirmative defense which may be raised by means of a Rule 12(b), *FRCP*, motion, particularly if it is clear from the face of the Complaint or from the record of the prior case. *Fletcher v. Bryan*, 266 F.2d 72 (4th Cir. 1959). *See also, Mann v. Peoples First Nat. Bank & Trust Co.*, 209 F.2d 570 (4th Cir. 1954); *Ellis v. Cates*, 178 F.2d 791 (4th Cir. 1952).

In ruling on a defense of *res judicata*, the District Court was required to consider three (3) issues: (a) whether the issue in this action was identical to the one decided in the prior proceeding; (b) whether the prior litigation reached a final judgment on the merits, and (c) whether the party against whom the plea was asserted was a party, or in privity with a party, to the prior

---

[7] Material submitted as part of the Complaint and documents from the public record was properly considered by the District Court in ruling on the 12(b)(6), *FRCP*, Motion. *Quiller v. Barclays American Credit, Inc.*, 727 F.2d 1067 (11th Cir. 1984); *Amfac Mfg. Corp. v. Arizona Mall of Tempe*, 583 F.2d 426 (9th Cir. 1978); *Phillips v. Bureau of Prisons*, 591 F.2d 966 (D.C.Cir. 1979).

adjudication. *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,* 402 U.S. 313, 323-324 (1971).

The issue of the constitutionality of *S.C. Code Ann.* § 6-11-1250 and of the JIPSD Wastewater Resolution had previously been litigated and decided in state court proceedings. The Petitioner was barred from again raising those issues in this case. In *Allen v. McCurry,* 449 U.S. 90 (1980), this Court outlined the analysis to be applied prior state court adjudications of issues presented in 42 *U.S.C.* § 1983 actions. The *McCurry* Court endorsed the line of cases which held that Section 1983 "presents no categorized bar to the application of *res judicata* and collateral estoppel concepts." *Id.* 449 U.S. 90, 97. To hold otherwise, noted this Court, would be to infer "a general distrust of the state courts to render correct decisions on constitutional issues." *Id.* 449 U.S. 90, 104.

The Petitioner had previously argued that *S.C. Code Ann.* § 6-11-1250 and the JIPSD Wastewater Resolution were unconstitutional. The arguments were heard and rejected. The Petitioner argued these statutes were unconstitutional in *Seigel v. JIPSD* the prior state court action. He had a full, fair, and reasonable opportunity to litigate those issues. Based upon the facts stated in the Complaint and the judicial rulings that were a matter of public record, those claims were properly dismissed by the lower courts. The Petitioner's claim was clearly barred by the application of *res judicata.*

The Petitioner's Complaint in that case alleged that the JIPSD's Enabling Act, 1961 *Act No.* 498 was unconstitutional and further that no such criminal charges

could be brought under 1965 *Act No.* 397.[8] The JIPSD removed that case to federal court and moved to dismiss the 42 *U.S.C.* § 1983 claim as well as the state claims. The District Court granted the JIPSD's motion to dismiss the 42 *U.S.C* § 1983 claims, holding that 1961 *Act No.* 498, and *S.C. Code Ann.* §§ 6-11-1251, 1250 and 1260 were constitutional statutes. No appeal was taken. That Order remained the law of the case. The lower courts properly accepted that proposition in this matter.

Judge Howell cited the District Court's decision in *Seigel v. JIPSD* in his Order granting summary judgment to the JIPSD on Petitioner's state claims for malicious prosecution and abuse of process:

> There is no basis to support the [Petitioner's] claim that the [JIPSD] should have known from this language that a judge would later rule that § 9 of *Act No.* 498 was unconstitutional.
>
> . . .
>
> Indeed, Federal Chief District Court Judge, Sol Blatt, Jr. has reviewed the provisions in question and held them to be constitutional, stating 'well that's all a part of the regulations, that they refer to. When you read all of those, I am convinced that 498 was not superseded and 498 is still in force and in effect it's constitutional.'

Subsequently, the Petitioner appealed Judge Howell's order granting summary judgment. The constitutionality of *S.C. Code Ann.* § 6-11-1250 was again addressed. The South Carolina Supreme Court affirmed Judge Howell's

---

[8] That act is now codified as *S.C. Code Ann.* § 6-11-1250 *et. seq.*

ruling on summary judgment[9] and the Petitioner's petition for rehearing was denied on January 25, 1991.[10]

This constitutionality issue was settled at that point. The lower courts have now settled it again. The Petitioner had a full and fair opportunity to litigate the issue of the constitu-tionality of these statutes, before both state and federal judges. Neither the District Court's nor Judge Howell's decisions have been reversed nor vacated. The lower courts determined that the Petitioner should not be allowed to relitigate issues which have been actually litigated and directly determined.

CONCLUSION

The Petitioner's claim failed to state any facts to support a claim that any act or omission on the part of the JIPSD, it Commissioners, Welch, or Quinn caused his incarceration. His claim that *S.C. Code Ann.* § 6-11-1250 and the JIPSD Wastewater Resolution are unconstitutional has already been actually litigated in appropriate judicial forums. The statutes have been determined to be constitutional. The lower courts properly dismissed the Petitioner's Complaint for failure to state a claim. Consequently, these Respondents respectfully request that the

---

[9] *See,* South Carolina Supreme Court Opinion No. 90-MO-323.

[10] *See,* Davis Advance Sheet No. 3, dated February 9, 1991 at p.3.

Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

STEPHEN P. GROVES
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street (P. O. Box 993)
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for the Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; And Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District
(Counsel of Record)

Dated: April 12, 1994

Supreme Court, U.S.
FILED
APR 13 1994
OFFICE OF THE CLERK

No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENT, WILLIAM T. HOWELL, JUDGE

Stephen P. Groves, Esquire
Young, Clement, Rivers & Tisdale
28 Broad Street, P. O. Box 993
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for Respondent, William T. Howell, Judge
(Counsel of Record)

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Respondent, The Honorable William T. Howell, believes that the only questions presented, as they relate to him, are properly stated as follows:

I. Whether the lower courts were correct in holding that a state court judge was absolutely immune from liability under 42 *U.S.C.* § 1983 for his actions in this case?

II. Whether the lower courts were correct in holding that if the Petitioner intended to state a claim for declaratory/injunctive relief, that claim was barred as a matter of law because no case or controversy existed as the allegedly offending judicial order had been abated prior to when the Petitioner instituted this action?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS AND JUDGMENTS BELOW 2

JURISDICTION 3

STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 4

SUMMARY OF THE ARGUMENT 7

ARGUMENT 7

I. THE PETITIONER'S 42 *U.S.C.* § 1983 CIVIL LIABILITY CLAIM AGAINST THE RESPONDENT, THE HONORABLE WILLIAM T. HOWELL, CIRCUIT JUDGE, WAS BARRED BY THE DOCTRINE OF JUDICIAL IMMUNITY 7

II. ASSUMING THE PETITIONER INTENDED TO STATE A CLAIM FOR DECLARATORY/INJUNCTIVE RELIEF, THAT CLAIM WAS BARRED AS A MATTER OF LAW BECAUSE NO CASE OR CONTROVERSY EXISTED AS THE RESPONDENT, THE HONORABLE WILLIAM T. HOWELL, CIRCUIT JUDGE, ABATED HIS ORDER OF INCARCERATION 10

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Abele v. Markle, 452 F.2d 1121 (2nd Cir. 1971)..... 11

Bradley v. Fisher, 13 Wall. 335 (1872)..... 9

Bryan v. Stillwater Board of Realtors, 578 F.2d 1319 (10th Cir. 1977)..... 7

Butz v. Economou, 438 U.S. 478 (1978)..... 8

City of Los Angeles v. Lyons, 461 U.S. 95 (1984)..... 11

Davidson v. State of Georgia, 662 F.2d 895 (5th Cir. 1980)..... 7

Dennis v. Sparks, 449 U.S. 24 (1980)..... 8

Forrester v. White, 484 U.S. 219 (1988)..... 8

Fowler v. Alexander, 478 F.2d 694 (4th Cir. 1973)..... 11

Glus v. Brooklyn Eastern Dist. Terminal, 359 U.S. 231 (1959)..... 3

Golden v. Zwickler, 394 U.S. 103 (1969)..... 11

Illinois v. Gates, 462 U.S. 213 (1983)..... 3

Imbler v. Pachtman, 424 U.S. 409 (1976)..... 8

James Island Public Service District v. Wilburt A. Seigel (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987)..... 5

James Island Public Service District v. Wilburt A. Seigel (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas)..... 5

Miree v. DeKalb County, Georgia, 433 U.S. 25 (1977)..... 7

Mireless v. Waco, ___ U.S. ___, 112 S. Ct. 286 (1991) (per curiam)..... 8

TABLE OF AUTHORITIES – Continued

Page

Phillips v. Bureau of Prisons, 591 F.2d 966 (D.C.Cir. 1979) 8

Pierson v. Ray, 386 U.S. 547 (1967) 9

Pulliam v. Allen, 466 U.S. 522 (1984) 10

Pure Oil Co. v. Suarez, 384 U.S. 202 (1966) 3

Rizzo v. Goode, 423 U.S. 362 (1976) 11

Scheuer v. Rhoades, 416 U.S. 238 (1974) 9

Seigel v. James Island Public Service District, et al., No. 92-1204 (4th Cir. Nov. 10, 1992) 2

Stump v. Sparkman, 435 U.S. 349 (1978) 8, 9

Waterman, S.S. Corp. v. United States, 381 U.S. 252 (1965) 3

STATUTES AND RULES

S.C. Code Ann. § 6-11-1250 (1976) 8

S.C. Code Ann. § 14-5-110 (Supp. 1993) 4

S.C. Code Ann. § 14-8-20 (Supp. 1993) 4

28 *U.S.C.* § 636(b)(1)(C) 6

28 *U.S.C.* § 1254(1) 3

28 *U.S.C.* § 1257 3

28 *U.S.C.* § 1257(3) 3

42 *U.S.C.* § 1983 ..... *passim*

Rule 12(b), *FRCP* 6

TABLE OF AUTHORITIES – Continued

Page

Rule 12(b)(6), *FRCP* 4, 7, 8

Sup. Ct. R. 10 3

U.S. Const. art. III, § 2 10

BOOKS AND TREATISES

2 S. Nahmod, *Civil Rights and Civil Liberties Litigation: The Law of Section 1983*, § 7.07 (3d ed. 1991) 8

5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357 (1969) 8

No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; P. DOUGLAS TAYLOR, WARDEN, LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENT, WILLIAM T. HOWELL, JUDGE

The Respondent, William T. Howell, Judge, respectfully requests that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991. That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix

A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates,* 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States,* 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez,* 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal,* 359 U.S. 231 (1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This *pro se* civil rights action came before the District Court on a Rule 12(b)(6), *FRCP*, Motion to Dismiss filed by the Respondent, the Honorable William T. Howell ("Judge Howell").[1] The Petitioner's action against Judge Howell arose out of Judge Howell's January 6, 1989, Order to incarcerate the Petitioner for his willful failure to connect to a sewer line maintained by the Respondent, James Island Public Service District ("JIPSD"). The Petitioner claimed that the Order was "suspect, unfair, and violative of his civil rights." Judge Howell's Motion to Dismiss was based on the ground that the Petitioner's

[1] At the time of the actions complained of in this case Judge Howell served as a Circuit Judge for the State of South Carolina. *S.C. Code Ann.* § 14-5-110 (Supp. 1993). He now serves as the Chief Judge of the South Carolina Court of Appeals. *S.C. Code Ann.* § 14-8-20 (Supp. 1993).

Complaint failed to state a claim upon which relief could be granted.

In 1984, the JIPSD instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[2] The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[3] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause why an Order should not be issued finding the Petitioner in contempt of Court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987 Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him sixty (60) days to hook up to the JIPSD's sewer system, in order to avoid incarceration. The Petitioner petitioned the South Carolina Supreme Court for a Writ of Supersedeas to stay Judge Howell's contempt sentence. The Supreme Court denied the petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by not hooking up to the JIPSD sewer system. On January 6, 1989, Judge Howell ordered the

---

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) (*"JIPSD v. Seigel"*).

[3] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

Petitioner to begin serving his contempt sentence on January 11, 1989. The Petitioner actually served only one (1) night at the Lieber Correctional Institute ("Lieber"). On February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action was Judge Howell. He, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the Respondents' motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See* 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District Court's Order in a *per curiam* rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the

decisions below which dismissed his action against all of the Respondents, including Judge Howell.

SUMMARY OF THE ARGUMENT

In all matters related to this case Judge Howell acted solely in his judicial capacity. He was absolutely immune from any liability under 42 *U.S.C.* § 1983. In addition, even if the Petitioner sought declaratory/injunctive relief, the Petitioner did not have standing to assert that claim since Judge Howell had abated the Order of Incarceration. The lower courts were correct in dismissing the Petitioner's Complaint against Judge Howell.

ARGUMENT

I. THE PETITIONER'S 42 *U.S.C.* § 1983 CIVIL LIABILITY CLAIM AGAINST THE RESPONDENT, THE HONORABLE WILLIAM T. HOWELL, CIRCUIT JUDGE, WAS BARRED BY THE DOCTRINE OF JUDICIAL IMMUNITY.

In ruling on a 12(b)(6), *FRCP*, motion, the lower courts were required to presume all factual allegations of the Complaint to be true. *Miree v. DeKalb County, Georgia*, 433 U.S. 25 (1977). Legal conclusions and opinions couched as factual allegations, however, were not to be given a presumption of truthfulness. *Davidson v. State of Georgia*, 662 F.2d 895 (5th Cir. 1980); *Bryan v. Stillwater Board of Realtors*, 578 F.2d 1319 (10th Cir. 1977).

A motion under Rule 12(b)(6), *FRCP*, must be granted if an affirmative defense is apparent from the face of the Complaint.[4] Dismissal was required by the lower courts if the allegations of the Petitioner's Complaint demonstrated that Judge Howell was absolutely immune from the claim. *Mireless v. Waco*, ___ U.S. ___, 112 S. Ct. 286, 287 (1991) (per curiam); *Forrester v. White*, 484 U.S. 219 (1988); *Dennis v. Sparks*, 449 U.S. 24 (1980); *Butz v. Economou*, 438 U.S. 478 (1978); *Imbler v. Pachtman*, 424 U.S. 409 (1976).

It was clear from the face of the Petitioner's Complaint, and the lower courts found, that Judge Howell was absolutely immune from the Petitioner's claims against him. The Petitioner acknowledged that Judge Howell had jurisdiction of the case pursuant to *S.C. Code Ann.* § 6-11-1250 (1976) when he entered the January 6, 1989, Order of Incarceration. It was undisputed that the Petitioner's claim against Judge Howell arose out of acts Judge Howell undertook in his judicial capacity. 2 S. Nahmod, *Civil Rights and Civil Liberties Litigation: The Law of Section 1983*, § 7.07 (3d ed. 1991) (citing *Stump v. Sparkman*, 435 U.S. 349, 356 (1978)). Accordingly, the 42 *U.S.C.* § 1983 damages claim was barred by the doctrine of judicial immunity.

This Court adopted the doctrine of judicial immunity in 1872. The Court recognized that it was a general principle of

---

[4] Material which is submitted as a part of the Complaint, as well as items in the public record can be, and presumably was, considered by the lower courts. *Phillips v. Bureau of Prisons*, 591 F.2d 966 (D.C.Cir. 1979), (citing 5 C. Wright and A. Miller, *Federal Practice and Procedure*, § 1357 (1969)).

the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, "[should] be free to act upon his own convictions without apprehension of personal consequences to himself." *Bradley v. Fisher*, 13 Wall. 335, 347 (1872). The lower courts properly adopted this proposition.

Judicial immunity recognizes that a judge may err. The policy behind the defense also recognizes, however, that it is better for a judge, when exercising the discretion inherent in his judicial power, "to risk some error and possible injury from such error than not to decide or act at all." *Scheuer v. Rhoades*, 416 U.S. 238, 242 (1974). The Petitioner's disagreement with Judge Howell's Order does not strip Judge Howell of his immunity. The immunity applied "however erroneous the act may have been and however injurious [were] its consequences" to the Petitioner. *Bradley*, 13 Wall. 335, 347.

Judicial immunity applies even when the judge is accused of acting maliciously and corruptly. *See, Sparkman*, 435 U.S. 349, 356. As the *Bradley* Court stated, this immunity "is not for the protection or benefit of a malicious or corrupt judge but for the benefit of the public, whose interest it is that the judges function with independence and without fear or intimidation." *Id.*, 13 Wall. 335, 349. In *Pierson v. Ray*[5], this Court held that this common-law absolute immunity of judges for their judicial acts

---

[5] 386 U.S. 547 (1967) (Court held absolute immunity shielded a municipal judge who was sued for monetary damages under 42 *U.S.C.* § 1983 by clergymen who alleged that he had convicted them unconstitutionally for a peaceful protest against racial segregation).

also applied to claims under federal statute 42 *U.S.C.* § 1983. Therefore, the Petitioner's claim against Judge Howell for damages pursuant to 42 *U.S.C.* § 1983 was barred as a matter of law. The lower courts properly applied the applicable law.

II. ASSUMING THE PETITIONER INTENDED TO STATE A CLAIM FOR DECLARATORY/INJUNCTIVE RELIEF, THAT CLAIM WAS BARRED AS A MATTER OF LAW BECAUSE NO CASE OR CONTROVERSY EXISTED AS THE RESPONDENT, THE HONORABLE WILLIAM T. HOWELL, CIRCUIT JUDGE, ABATED HIS ORDER OF INCARCERATION.

Judicial immunity does not extend to a 42 *U.S.C.* § 1983 action for declaratory/injunctive relief. *Pulliam v. Allen*, 466 U.S. 522 (1984). Given the liberality with which the Petitioner's *pro se* Complaint must be reviewed by the lower courts on a motion to dismiss, the Petitioner's Complaint could have arguably been broadly interpreted to request declaratory and/or injunctive relief.

Even if the Petitioner's Complaint could be interpreted to have sought declaratory/injunctive relief the Petitioner lacked standing to present the claim, and the lower courts lacked jurisdiction to hear the Petitioner's request. Standing is a jurisdictional issue, as opposed to a procedural one. The judicial power of the federal courts is constitutionally limited to the adjudication of "cases" or "controversies." *U.S. Const.* art. III, § 2. The existence of a case or controversy

> 'depends upon whether the person seeking relief has alleged a sufficient personal stake in

> the outcome to assure that the Court will be called upon to resolve real issues between genuine adversaries rather than merely to give advisory opinions with respect to abstract or theoretical questions.'

Fowler v. Alexander, 478 F.2d 694 (4th Cir. 1973) (quoting *Abele v. Markle*, 452 F.2d 1121, 1124 (2nd Cir. 1971)).

As the Petitioner's Complaint plainly indicated, the Petitioner was no longer in jail nor was the Order of Incarceration still in effect at the time he filed this action. The Petitioner was not entitled to declaratory or injunctive relief. He was unable to show that he was in real, immediate danger of sustaining some direct injury as a result of the challenged official conduct. Abstract injury is not enough. The injury, or threat of injury, must be "real and immediate", not "conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95 (1984); *Rizzo v. Goode*, 423 U.S. 362 (1976); *Golden v. Zwickler*, 394 U.S. 103 (1969).

It was unclear why or how a specific procedure, or the lack of a procedure, to specify the location of incarceration could have been harmful to the Petitioner. Since the allegedly offending order had been abated; the Petitioner did not face any real or immediate threat of incarceration. The Petitioner was, likewise, under no present threat of transportation to a place of incarceration. The likelihood that he would be incarcerated in the future was remote and speculative in the extreme. Even if litigation was to be initiated again between the Petitioner and the JIPSD, there was no reason to assume that the Petitioner would be found in contempt of court. There was also no reason to assume that if he was found in contempt of court, there

would be the sentence of incarceration as opposed to a monetary fine.

CONCLUSION

The United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit correctly determined that the Petitioner's 42 *U.S.C.* § 1983 damages claim against Judge Howell was barred by the doctrine of judicial immunity. The remaining claim, if indeed one was implied, for declaratory or injunctive relief concerning the procedure of a judge to specify the place of incarceration in an order of incarceration was also barred as the Petitioner did not have standing to present the claim because the issue was moot.

The lower courts properly dismissed the Petitioner's Complaint for failure to state a claim for relief against Judge Howell. Consequently, this Respondent respectfully requests that the Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

STEPHEN P. GROVES
YOUNG, CLEMENT, RIVERS & TISDALE
28 Broad Street (P. O. Box 993)
Charleston, South Carolina 29402
(803) 577-4000

Attorneys for the Respondent
The Honorable William T. Howell
(Counsel of Record)

Dated: April 13, 1994

FILED
APR 12 1994
OFFICE OF THE CLERK

(6)

NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner,
vs.
JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., constituting the membership of the Commissioners of the James Island Public Service District; ROBERT E. WELCH, Manager, James Island Public Service District; EDWIN B. QUINN, Wastewater Superintendent, James Island Public Service District; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, Judge; J. ALTON CANNON, JR., Sheriff, Charleston County; ROBERT MILLER, Undersheriff, Charleston County; THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner, South Carolina Department of Corrections; P. DOUGLAS TAYLOR, Warden, Lieber Correctional Institution,
Respondents,

On Petition For A Writ of Certiorari To
The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief to Opposition of: Respondents: SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING.

Wilburt A. Siegel, Pro se
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586

20pp

REPLY TO QUESTION

This Court Should Grant My Petition To Resolve The Question Whether A Citizen of South Carolina Can Be Wrongfully Incarcerated In a State Penitentiary's Maximum Security Cell With The Willful Participation And Advise Of The Sinkler Firm And Their Attorneys, In Violation Of The United States Constitution's Amendment V and XIV; When Their Actions Were Under Color Of State Law, And The "Law" They Themselves Made; Therefore They Are Liable Under 42 U.S.C. §1983.

TABLE OF CONTENTS

	Page
REPLY TO QUESTION	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PARTIES INVOLVED	1-2
OPINIONS AND ORDERS BELOW	3
JURISDICTION	4
STATUTORY PROVISIONS INVOLVED ..	5
STATEMENT OF THE CASE	5
SUMMARY OF THE ARGUMENT	6
ARGUMENT	7
CONCLUSION	17

TABLE OF AUTHORITIES

CASES

LUGAR VS EDMONDSON OIL CO., et al.. 16
457 US 922
73 L Ed 2d 482
102 S CT 2744 (1982)

RUGGLES VS PADGETT..... 8
240 S. C. 494
126 S. E. 2d 553 (1962)

CONSTITUTIONAL AMENDMENTS:

V..... 7
XIV..... 7

FEDERAL STATUTES:

28 U.S.C. §1254(1)..... 4
28 U.S.C. §1257(3)..... 4
42 U.S.C. §1983.... 2, 5, 6, 7, 17

South Carolina Code of Laws:

6-11-1230..... 12

James Island Public Service District:

Rule 20(i)..... 14

Wastewater Resolution..... 7
Section 8.02..... 12, 15
Section 8.03..... 15

Ordinance (Retroactive)..... 14

NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner,

vs.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., constituting the membership of the Commissioners of the James Island Public Service District; ROBERT E. WELCH, Manager, James Island Public Service District; EDWIN B. QUINN, Wastewater Superintendent, James Island Public Service District; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, Judge; J. ALTON CANNON, JR., Sheriff, Charleston County; ROBERT MILLER, Undersheriff, Charleston County; THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner, South Carolina Department of 'Corrections; P. DOUGLAS TAYLOR, Warden, Lieber Correctional Institution,

Respondents,

On Petition For A Writ of Certiorari To
The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief to Opposition of: Respondents: SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING.

April 4, 1994 the Brief of Respondents Sinkler & Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen and Stephen E. Darling in opposition to my Petition was received.

In reply I humbly pray this Court will grant my petition for writ of certiorari as this "Sewergate" is a novel issue, one where there is no certainty or stability in the law, as public policy/police power are without bounds.

The full record in the lower court shows the privately retained law firm's repeated actions in and out of criminal and civil courts does constitute action taken under color of state law for purposes of 42 U.S.C. §1983; as we are supposed to be a Nation of laws, not of men.

I was not guilty of the evils which menace the health, safety, morals and welfare of the people; yet incarcerated.

OPINIONS AND ORDERS BELOW

Appendix "A", Pet. Pg. 1-A - 5-A:

The United States Court of Appeals for the Fourth Circuit accepted the reasoning of the Charleston, South Carolina District Court to dismiss all defendants in this civil rights case, where I was wrongfully incarcerated in a State Prison for the crime of not being able to connect to a crushed-full-of-roots sewerline, improperly installed in the state highway drainage ditch-17" cover.

Appendix "B", Pet. Pg. 6-A - 9-A:

The Order of the South Carolina District Court at Charleston accepted the recommendation of the Magistrate Judge in dismissing all defendants.

Appendix "C", Pet. Pg. 10-A - 48-A:

The Charleston South Carolina Magistrate Judge's Report and Recommendation dismissing all defendants prior to discovery and trial by jury.

JURISDICTION

My appreciation to the Respondents for calling attention to my error in stating 28 U.S.C. §1257(3), rather than 28 U.S.C. §1254: Courts of appeals; certiorari; certified questions:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

This case of threats, multiple arrest warrants, court cases, wrongful incarceration and $100/day/fine/lien on property for the infamous "crime" of not being able to connect to an improperly installed sewerline is such a departure from the accepted and usual course of judicial proceedings that the entire facts of this "Sewergate" cries out for the attention of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Section 42 U.S.C. §1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in action at law, suit in equity, or proper proceeding for redress."

STATEMENT OF THE CASE

In 1979 I paid the required permit to become one of the first customers of the Respondent's "client" the James Island Public Service District's waste-water collection system.

I was provided an improper sewerline. Yet, threatening letters, criminal arrest warrants, civil case on the same crushed sewerline continued.

SUMMARY OF THE ARGUMENT

Intentional deprivation of civil rights applies to every citizen in this Nation, including the above respondents who are charged with knowledge of the law; they were prosecutors in both the criminal and civil courts.

The decision below should be reversed, discovery permitted, trial by jury should be allowed as an important question remains unanswered as they were more than "privately retained counsel for the purpose of initiating certain legal proceedings in South Carolina state court".

The facts are clear that the law firm and its attorneys were acting under color of State Law for the purposes of my 42 U.S.C. §1983 action for their constant participation in seeking my incarceration over the years.

They succeeded January 11, 1989.

ARGUMENT

This Court Should Grant My Petition To Resolve The Question Whether A Citizen of South Carolina Can Be Wrongfully Incarcerated In a State Penitentiary's Maximum Security Cell With The Willful Participation And Advise Of The Sinkler Firm And Their Attorneys, In Violation Of The United States Constitution's Amendment V and XIV; When Their Actions Were Under Color Of State Law, And The "Law" They Themselves Made; Therefore They Are Liable Under 42 U.S.C. §1983.

The Respondents Sinkler & Boyd, P.A. and their attorneys highlight why this Court should grant my petition.

Respondents' STATEMENT OF THE CASE (Brief in Opposition Pg. 5 and 6) speaks of the decade long attempt by the "District" to have me connect to the District's sewer system as required by the District's Wastewater Collection Regulation passed March 26, 1979. Above Respondents promulgated the Resolution themselves.

The Respondents knew their own case law of RUGGLES VS PADGETT, 240 S.C. 494, 126 S.E. 2d 553 (1962) concerned sewers, just one year following the creation of the James Island Public Service District, clearly states:

> "...cannot extend in such a manner as to provide authorization for special ordinances of a penal nature".

That Wastewater Use and Rate Resolution was so powerful to be used to obtain illegal arrest warrants, with 10 days in jail or $25.00 day fine for each day failed to connect. The warrants were declared unconstitutional, my criminal record was ordered expunged.

The Respondents proceeded again with their powerful Resolution - this time to civil court, seeking a mandatory injunction - when all the time they were fully aware the sewerline was crushed and unsuitable for any purpose, let alone the removal of raw sewage.

July 6, 1988, 15 months after their ill-gotten ORDER, attorney offered CASH if Mr. and Mrs. Siegel would sign away any and all past, present and future claims against the District, agents, employees, servants, etc. KEEP SECRET.

Constitutional rights are virtually meaningless if such a case as this is allowed to be plowed under when the magnitude of the mistakes of the Respondents dilutes the professional responsibility of attorneys in America.

The actions of the Respondents cannot be sustained on the basis they are only privately retained attorneys, the facts prove otherwise.

Federal agencies provided the bulk of the grants and loans for the system.

The Farmers Home Administration (USDA) in Columbia, S. C. provided a "DECLINATION FORM" that is applicable throughout the United States.

This Court could search every law library in America and never find a case whereby a citizen expected and paid for a safe-proper sewerline but was provided 4" Polyvinyl Chloride Pipe (PVC), manufactured by CERTAINTEED CORP., Type PSM, 12454B, SDR 35-Sewer ASTM-D-3034, MTVL-S5 in the bottom of an active state highway drainage ditch, installed without proper bedding or proper cover (17") and only a breath below the City Waterline that serves this entire community; violating DEHEC's rule.

The Engineer at the CERTAINTEED CORP. said the installation was wrong, the PVC will "flex" and will become unserviceable for any purpose. It did.

Only when we became informed - took pictures of the plugged sewerline at the manhole to the District Officals and asked for a "proper sewerline".

Then the Respondents served a RULE

TO SHOW CAUSE, with an UNSIGNED ORDER; why we were not connected to the crushed-full-of-roots sewerline.

Respondents cite some twenty-two (22) cases they claim are applicable as the authority for their willful participation in providing wrong information/advise to their "clients", the James Island Public Service District Commissioners and employees; by with-holding the truth from the many Courts when they represented their "clients".

Respondents do not attempt to defend their wrongful participation in providing misinformation/advise to the Federal Agencies (USDA), the District, the Court(s) and the citizens; such as:

1. January 25, 1978:

The Sinkler Firm informed the Farmers Home Administration, who provided loans and grants, along with the Environmental Protection Agency, for the sewerline:

> "...the District has the authority, pursuant to Section 6-11-1230, South Carolina Code of Laws, 1976, as amended, to prescribe and enforce regulations requiring all persons to whom it may be available to make use of any sewer system which the District shall from time to time operate".

2. April 03, 1979:

The Sinkler Firm recorded the District's Wastewater Use and Rate Resolution (they promulgated) at the RMC Office (BK T118, PG 219) and copies of the Resolution were sold to the District citizens as the public policy regarding penalties:

ARTICLE VIII PENALTIES

> Section 8.02 - Failure to comply with this resolution shall subject the person to a penalty of not less than $100 per day and payment of all damages incurred by the District's sewer system as a result of non-compliance.

3. June 25, 1979:

18 months before required time to connect to the public sewer system I paid the permit and tap-in fee to become

one of the first customers of the James Island Public Service District's Waste-water Collection System; I was unaware it was "mandatory"; still waiting for a proper sewerline.

4. March 18, 1980:

Bradford Avenue was sewered on West Side in the Street - except in front of 1058 Bradford Avenue. I sought a proper sewerline connection from that date to this...I failed...legal action in criminal and civil courts continued.

5. January 11, 1989:

The very afternoon I was behind maximum security bars at the Lieber State Prison the Sinkler law firm, out of unknown hundreds, filed six (6) cases against homeowners who had not paid their tap-in fee, nor connected to a proper sewer-line;...they used me as their "whipping boy" and took advantage of the publicity they generated...Prison Inmate #153926!

The Respondents have the power and authority to make: - white, black; black, white; the crooked, straight; straight, crooked; would that all of us could: Example:

Eight years of misrepresentation to the citizens, the Criminal and Civil Court(s); obtaining illegal order; then admitting all Courts lacked Jurisdiction they "RETROACTIVELY CLEARED THE AIR ON LAW...TO ENSURE VALIDITY OF PAST RESOLUTIONS"...June 8 and 22, 1987:

> AN ORDINANCE RATIFYING PAST ACTIONS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT COMMISSION
>
> WHEREAS, the Rules of Procedure at Rule 20(i) provide that, "All actions of the Commission shall be taken by Resolution, except that any action of the Commission which provides for raising revenue, appropriating funds, or incurring indebtedness ... shall be by ordinance..."; and
>
> WHEREAS, certain resolutions have been adopted which provide for raising revenue, appropriating funds,

> incurring indebtedness, or providing a penalty or establishing a rule or regulation for the violation of which a penalty is imposed, and inasmuch as the Commission is now minded to affirm this action previously taken by resolution by adoption of this Ordinance:
>
> NOW THEREFORE, BE IT ORDAINED that all action taken by resolution heretofore for said purposes are hereby affirmed.

August 21, 1987 the Respondents filed another RESOLUTION (B168-Pg779) amending portion of the March 26, 1979 Resolution:

Section 8.02 is amended by deletion of the phrase $100.00 and the substitution of the phrase $25.00.

Section 8.03 is added - Any owner who willfully fails or refuses to comply with this resolution...shall be subject to a civil penalty not to exceed Two Thousand and No/100 ($2,000.00) Dollars per day for each day of violation.

What next? There are no bounds.

I believe the case of LUGAR VS EDMONDSON OIL CO., etal (457 US 922, 73 L Ed 2d 482, 102 S Ct 2744) (1982) is applicable and describes the actions under color of state law by the Respondents:

Page 485:

> "This case concerns the relationship between the requirement of "state action" to establish a violation of the Fourteenth Amendment, and the requirement of action "under color of state law" to establish a right to recover a remedy for deprivation of constitutional rights when the deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage" of a State".

Page 498:

> "Private persons, jointly engaged with state officials in the prohibited action, are acting "under color of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents".

CONCLUSION

From the facts before this Court it is clear the Respondents (jointly and/or separately) have and will continue to misrepresent and abuse the Constitution.

I was forced to practice "CAVEAT EMPTOR", which under the foreseeability of a lay person, following knowledgeable persons' advise and common sense, was a compelling necessity; truth was proven: ...a crushed-abandoned sewerline.

My prayer is this Honorable Court will grant my petition for a writ of certiorari as the lower court decided incorrectly in dismissing all Respondents, prior to discovery, when they are liable under 42 USC §1983. (Amend. XIV).

Submitted in Respect for the Laws of this Nation,

Wilburt a. Siegel

Wilburt A. Siegel, Pro se
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586
April 11th, 1994

Supreme Court, U.S.
FILED
APR 20 1994
OFFICE OF THE CLERK

(7)

NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner,
vs.
JAMES ISLAND PUBLIC SERVICE DISTRICT,
et al, Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief To Opposition Of: Respondents:

JAMES ISLAND PUBLIC SERVICE DISTRICT; its COMMISSIONERS; ROBERT E. WELCH; EDWIN B. QUINN.

COUNTY OF CHARLESTON:
J. ALTON CANNON, JR., its Sheriff;
ROBERT MILLER, its Undersheriff.

WILLIAM T. HOWELL, Judge.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; P. DOUGLAS TAYLOR.

Wilburt A. Siegel, Pro se
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586

24 pp

REPLY TO QUESTIONS

This Court should grant my petition to resolve the question whether a citizen of South Carolina can be wrongfully incarcerated in a State Prison's maximum security cell, with the willful participation of the Respondents, in violation of the United States Constitution's Amendment V and XIV; when their actions were under color of State Law, and the "Law" they themselves made; when they are liable under 42 U.S.C. §1983.

TABLE OF CONTENTS

	Page
REPLY TO QUESTION	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PARTIES INVOLVED	1
OPINIONS AND ORDERS BELOW	2
JURISDICTION	3
STATUTORY PROVISIONS INVOLVED ..	4
STATEMENT OF THE CASE	4
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
James Island PSD; Commissioners; Welch, Quinn	11
Charleston County; Cannon; Miller	13
William T. Howell, Judge	15
South Carolina Dept. of Corrections; Evatt; Taylor	18
CONCLUSION	20

TABLE OF AUTHORITIES

CASES	Page
BRADLEY VS FISHER..... S.C. 13 Wall. 335 (No. 118) (1872)	16
HAFER VS MELO, et al ..... (112 S. Ct. 358, 60 US LW 4001) (1991)	19
LUCAS VS SOUTH CAROLINA COASTAL COUNCIL ..... (112 S. Ct. (1992)	6
McCALL VS BATSON..... 329 SE 2d 741 (1985)	6
WILL VS MICHIGAN DEPT. OF STATE POLICE ..... 491 U.S. 58 (1989)	19
CONSTITUTIONAL AMENDMENTS: XIV.....	20
FEDERAL STATUTES:	
28 U.S.C. §1254(1).....	3
28 U.S.C. §1257(3).....	3
42 U.S.C. §1983....	passim
Rule 12(b) FRCP.....	6
South Carolina Code of Laws:	
6-11-280.....	17
15-78-10.....	7
24-3-10.....	14
24-3-20.....	14

NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner
vs.
JAMES ISLAND PUBLIC SERVICE DISTRICT,
et al, Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief To Opposition Of:
Respondents:

JAMES ISLAND PUBLIC SERVICE DISTRICT; its
COMMISSIONERS; ROBERT E. WELCH;
EDWIN B. QUINN.

COUNTY OF CHARLESTON:
J. ALTON CANNON, JR., its Sheriff;
ROBERT MILLER, its Undersheriff.

WILLIAM T. HOWELL, Judge.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS;
PARKER EVATT; P. DOUGLAS TAYLOR.

From the facts before the Court it is clear the Respondents (jointly and/or severally) have and will continue to violate my civil, legal and vested rights.

OPINIONS AND ORDERS BELOW

Appendix "A", Pet. Pg. 1-A - 5-A:

The United States Court of Appeals for the Fourth Circuit accepted the reasoning of the Charleston, South Carolina District Court to dismiss all defendants in this civil rights case, where I was wrongfully incarcerated in a State Prison for the crime of not being able to connect to a crushed-full-of-roots sewerline, improperly installed in the state highway drainage ditch-17" cover.

Appendix "B", Pet. Pg. 6-A - 9-A:

The Order of the South Carolina District Court at Charleston accepted the recommendation of the Magistrate Judge in dismissing all defendants.

Appendix "C", Pet. Pg. 10-A - 48-A:

The Charleston South Carolina Magistrate Judge's Report and Recommendation dismissing all defendants prior to discovery and trial by jury.

JURISDICTION

My appreciation to the Respondents for calling attention to my error in stating 28 U.S.C. §1257(3), rather than 28 U.S.C. §1254: Courts of appeals; certiorari; certified questions:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

This case of threats, multiple arrest warrants, court cases, wrongful incarceration and $100/day/fine/lien on property for the infamous "crime" of not being able to connect to an improperly installed sewerline is such a departure from the accepted and usual course of judicial proceedings that the entire facts of this "Sewergate" cries out for the attention of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Section 42 U.S.C. §1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in action at law, suit in equity, or proper proceeding for redress."

STATEMENT OF THE CASE

In 1979 I paid the permit to become one of the first customers of the James Island Public Service District's Wastewater Collection System, installed in a swiss-cheese pattern of the District.

An improper sewerline was installed for 1058 Bradford Avenue. Yet, criminal and civil court action, wrongful incarceration, fine/lien resulted.

SUMMARY OF ARGUMENT

The Respondents highlight why this Court should grant my petition. They cite some 97 case laws as authority for their lack of accepting responsibility in denying me the right to be free.

When such a conundrum exists as is shown in the record I feel this Court's attention to the abuse of power and deprivation of my Constitutional rights is warranted, and would be greatly appreciated by an American citizen that my Petition for Certiorari be granted.

This Court could search every law library in America and never find a case whereby a citizen expected and paid for a safe-proper sewerline and was denied, until after my wrongful incarceration backfired on all the Respondents.

I was not guilty of menacing the health, safety, morals and welfare of the people of this State and Nation.

ARGUMENT

After the Charleston, South Carolina District Court inadvertently dismissed all defendants pursuant to Rule 12(b), FRCP, this Court ruled that South Carolina Agencies can err as in the case of LUCAS VS. SOUTH CAROLINA COASTAL COUNCIL (112 S. CT. 2886 (1992) property/liberty rights are important.

JUSTICE KENNEDY concurring in the judgment:

> "The case comes to the Court in an unusual posture ...whatever may occur in the future cannot undo what has occurred in the past.
>
> ...It is well established that temporary takings are as protected by the Constitution as are permanent ones".

The Respondents ignore the case of McCALL VS. BATSON, 329 SE 2d 741 (1985) as the Supreme Court of South Carolina "abolished the doctrine of sovereign immunity as it applies to the state...".

That case overruled some 122 cases to the extent that they hold an action may not be maintained against the State without its consent.

The result of that case was the General Assembly enacting S. C. Code of Laws §15-78-10, etc., declaring that claims against state agency is not barred from liability.

January 11, 1989: NEWS AND COURIER: "SIEGEL GOES TO JAIL IN SEWERLINE FIGHT": (Front page: 6" x 5" colored picture, Undersheriff Miller with Siegel and friends):

> Cannon arrived at the Siegel home shortly after 9 a.m. Wednesday to arrest the 73-year old on contempt of court charges.
>
> ...Order was passed down by 9th Circuit Judge William T. Howell that he tap in to the James Island Public Service District sewer system by Wednesday or face a six-month jail term.

The contempt of court charges could continue..."In other words, I have a life sentence for not hooking up," said Siegel, who left his American-flag-draped house Wednesday clutching a cane.

At the prison, Siegel was photographed, fingerprinted and will be kept in an evaluation center for the next few days. He was issued prison clothing - jeans, shoes, shirt and jacket - and will have a private cell.

He will undergo physical and mental testing and is being held in the maximum-security section used to orient new prisoners. He may be transferred to another prison once his status is defined, according to prison officials.

...within the James Island Public Service District ...more than 125 houses have not tapped in. The PSD is pursuing liens against those properties...

The PSD further says the Siegels are required to tap in as part of a stipulation in a Farmers Home Administration grant that paid for part of the island's sewer lines.

Interestingly, the Farmers Home Administration (USDA) in Columbia, S. C.

provided a "DECLINATION FORM" that is applicable throughout the United States; if a citizen cares to maintain their proper, approved by the Health Department septic system..such as we have.

January 13, 1989: NEWS AND COURIER: "STATE SPRINGS SIEGEL AFTER ONE DAY BEHIND BARS":

> Francis X. Archibald, spokesman for the state Department of Corrections, said that after Siegel was processed, the prison system's legal advisors discovered the prison did not have authority to accept anyone on civil contempt charges.
>
> The ruling was later backed up by state Attorney General's office, Archibald said.

January 14, 1989: THE EVENING POST: "JUDGE, STATE AT ODDS IN SIEGEL CASE": -

> The rejection of Wilburt Siegel from Lieber Correctional Institution now puts at odds the power of a circuit judge, the state Department of Corrections and the Constitution of South Carolina.

> ...Parker Evatt, commissioner of the Department of Corrections, ordered Siegel released.
>
> "Anybody can bring someone to my door and say, 'Take this person,'", Evatt said, "but we're here to take only those persons the prison system is authorized to accept".
>
> Sheriff Cannon said Friday that he is waiting for "some authority" to tell him if he must house Siegel and either uphold or override the decision of the Judge that sent Siegel to jail. "All I know is that I complied with the judge's order", he said. "Basically, I'm just sitting in a position now of waiting for some authority to tell me what to do. In a sense, our office was just a taxi service" for Siegel's transfer.
>
> ...Stay was granted by Ninth Circuit Judge William T. Howell, the man who originally ordered Siegel to jail.

Constitutional rights are virtually meaningless if such a case as this is allowed to be plowed under when the magnitude of the mistakes of the Respondents dilutes responsibility of elected officials and their employees.

April 15, 1994 Brief in Opposition to my petition was received from: Respondents: JAMES ISLAND PUBLIC SERVICE DISTRICT; its Commissioners; Robert E. Welch; Edwin B. Quinn.

The lower courts erred in holding my Complaint failed to allege facts indicating that these Respondents created the action and finally succeeded in obtaining my wrongful incarceration, as the record shows they started with the criminal arrest warrant in 1981, which was unconstitutional; they are liable under 42 U.S.C. §1983.

The Doctrine of res judicata does not apply when certain legislative acts and statutes were and are unconstitutional in the Respondents' practice of intentionally depriving me of my civil rights when they lacked juridiction to appear in both criminal and civil Court with an illegal Wastewater Resolution.

IRONICALLY, February 2, 1989 the Court, the above Respondents and their attorneys would purge the CONTEMPT ORDER - definite 6-months Charleston County Jail, Public works; not Lieber Prison as was ordered January 6, 1989, executed January 11, 1989, subject to provisions:

> The District would extend the sewer line 43' to the center of the Siegel residence, at the expense of the District; using care not to unreasonably damage the Siegel property.
>
> The District and Mr. Siegel do not intend that the Consent Order should be construed or constitute any admission of law or fact by either party.

WHAT WERE THE RESPONDENTS ADMITTING AFTER 8½+ years? They succeeded in getting what they wanted January 11, 1989...my incarceration in a State Prison maximum security cell and the publicity to scare the hundreds who failed to connect to their sewerline.

April 15, 1994 Brief in Opposition to my petition was received from: Respondents: COUNTY OF CHARLESTON; J. ALTON CANNON, JR., Sheriff; ROBERT MILLER, Undersheriff.

The full record in the lower court shows the Charleston County Councilmembers, the Sheriff and Undersheriff are charged with upholding their citizens civil rights, they did not.

The Sheriff, Undersheriff and deputies did enter my home; I was transported to a State Prison; rejected after 28 hours in a maximum security cell because I was not supposed to be there. WHY?

Respondents are not "ABSOLUTELY IMMUNE" by virtue of the "operation of derivative judicial immunity"; that excuse was overthrown at the German trials after World War II; rather, they are liable by virtue of "derivative tort".

William Pitt knew the Crown was strong, he wrote:

> "...the poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storms may enter but the King of England cannot enter - all his force dares not cross the threshold of the ruined tenement".

The lower courts erred in holding the above Respondents are absolutely immune from liability under 42 U.S.C. §1983 for their participation in depriving me of my liberty; Judge Howell lacked jurisdiction to select the prison. §24-3-10 and §24-3-20 (Pet. 71-A-73-A).

At the hearing before Judge Howell, six hours after I was rejected from State Prison, County Attorney stated:

> "Charleston County takes the position that we turned him over to the appropriate authorities...We asked for a hearing because he was deposited in effect back to the sheriff, who really does not have custody of him".

April 16, 1994 Brief in Opposition to my petition was received from: Respondent: WILLIAM T. HOWELL, JUDGE.

The lower courts erred in holding that Judge Howell was absolutely immune from liability under 42 U.S.C. §1983 for issuing an Order to have me incarcerated at Lieber State Prison when he lacked jurisdiction to do so.

There is a vast distinction between an erroneous exercise of authority and a usurpation of authority; such as I believe Judge Howell did in this case.

The full record in the lower court includes transcript of trials held before Judge Howell.

When he found me in willful contempt of court for being unable to do the impossible - connect to a crushed, improper sewerline at the cost of $2,000. to prove the sewerline was wrong, he remarked:

> "Well, you'll have to move out of your house then...You see, they've asked me to hold you in contempt and I really have little choice in the matter.. If I don't take action on this they're going to hold me in contempt." ...

I ask the Court to consider the applicability of this case as to the reasoning in BRADLEY VS FISHER, S. C. 13 Wall. 335 (No. 118) (1872); it states:

> "Where there is no jurisdiction there can be no discretion, for discretion is incident to jurisdiction.
>
> The discretion vested in courts, where private rights are concerned, is judicial, not unlimited.
>
> It must not be arbitrary, vague and fanciful.
>
> A judge or any person acting by authority as such, where he has over the subject matter and over the person, a general jurisdiction which he has not exceeded, will not be liable to have his judgment examined in an action brought against him; but if the jurisdiction be wanting over the subject matter and over the person, such judgment would be examinable".

By no stretch of interpretation can it be said Judge Howell had jurisdiction over me - a rejected prisoner.

The afternoon I, State Prison No. 153926, was rejected from Lieber Judge Howell asked someone to appeal his second order of incarceration; he then stayed that Order, so how could he later "abate" it while under appeal?

When Judge Howell was confronted with his clear lack of jurisdiction in usurping the statutory authority of the prison official, he then "abated" his Order of incarceration at Lieber Prison: NEWS: SIEGEL GETS FINE NOT TIME.

He was again outside his jurisdiction to Order a $100/day/fine/lien on property, when he succeeded in having me wrongfully incarcerated. His authority was stated as South Carolina Code of Laws §6-11-280 (I have been unable to locate that law).

April 16, 1994 Brief in Opposition to my petition was received from: Respondents: SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT; P. DOUGLAS TAYLOR.

The lower courts erred in holding that a state agency and its employees/ and/or/administrators were immune from liability under 42 U.S.C. §1983 for their actions in accepting me into their maximum security prison, rejecting me, destroying my record - because I was not supposed to be there.

Judge Howell stated at his status conference the Prison was waiting to accept me back; there is every chance I will be in jeopardy as Judge Howell also stated at the end of his third Order "An additional status conference may be scheduled in the future"...what does my future hold?

Certainty and stability in the law?

Certainly there was someone with authority at Lieber state prison who accepted me from the custody of Charleston County Sheriff Cannon, they mugged, fingerprinted, female persons examined me-causing much bleeding from my rectal cancer.

Does the Prison system open wide their gates to the whim of any Judge or Sheriff?

This Court held in HAFER VS MELO, et al (112 S. Ct. 358, 60 US LW 4001):

> In WILL VS. MICHIGAN DEPT. OF STATE POLICE, 491 U.S. 58 (1989), we held that state officials "acting in their official capacities: are outside the class of "persons" subject to liability under 42 U.S.C. §1983. 491 U.S. at 71. Petitioner takes this language to mean that §1983 does not authorize suits against state officers for damages arising from official acts. We reject this reading of WILL and hold that state officials sued in their capacities are "persons" for purposes of §1983.

CONCLUSION

The history of this unnecessary "Sewergate", originating in Criminal Court, then Civil Court, then my wrongful incarceration in a State Prison; in clear absence of Jurisdiction and in violation of State Statute...is a great violation of my Federal Constitutional civil rights - when I had to practice "Buyer Beware".

My prayer is this Honorable Court will grant my petition for a writ of certiorari as the lower court decided incorrectly in dismissing all Respondents, prior to discovery, when they are liable under 42 USC §1983. (Amend. XIV).

Most respectfully yours,

Wilburt a. Siegel

Wilburt A. Siegel, Petitioner
1058 Bradford Avenue
Charleston, SC 29412-4046
Phone: 803-795-8586

April 19th, 1994